

# FINANCIAL MARKETS

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL MARKETS  
OF THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
NINETY-THIRD CONGRESS  
FIRST SESSION  
ON  
THE IMPACT OF INSTITUTIONAL INVESTORS IN THE  
STOCK MARKET

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JULY 24, 25, AND 26; SEPTEMBER 24, 25, 27, AND 28, 1973

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APPENDIX

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Questionnaire Submitted to the Nation's 25 Largest Bank Trust Departments



Printed for the use of the Committee on Finance

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**ROBERT A. BEST**, *Chief Economist*

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**Questionnaire Submitted by Senator Bentsen on October 28, 1978,  
to the Nation's 25 Largest Bank Trust Departments. The Ques-  
tionnaire and Responses Are Included in This Volume.**

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## QUESTIONNAIRE

1. What is the total dollar amount of your assets under investment management?
2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?
3. What is the total dollar amount of your employee benefit plans under management?
4. What is the average annual inflow of employee benefit funds into your management?
5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?
6. What percentage of the employee benefit funds under your management are invested in common stock?
7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.
8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?
9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?
10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2%, 5%, 10%, 15%?
11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?
12. What is your personal opinion about a prudent limit for portfolio assets in one company?
13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?
14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?
15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?
16. Can many widely held companies be effectively controlled with much less than a 50% position?
17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?
18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?
19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?
20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?
21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?
22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.
23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

25. What is the average size of cash balances of the funds under your management?

26. Are cash balances from your trust department deposited on the commercial side of your bank?

## 25 LARGEST TRUST DEPARTMENTS

- Samuel R. Callaway, Executive Vice President, Morgan Guaranty Trust Company, 23 Wall Street, New York, New York 10015
- Malcolm A. Stevenson, Senior Vice President, Bankers Trust Company, 280 Park Avenue, New York, New York 10017
- J. L. Hellshorn, First National City Bank, 309 Park Avenue, New York, New York 10022
- James W. North, Executive Vice President, The Chase Manhattan Bank, N.A., 1 Chase Manhattan Plaza, New York, New York 10015
- Charles W. Buck, President, United States Trust Company, 45 Wall Street, New York, New York 10005
- C. Roderick O'Neil, Executive Vice President, Manufacturers Hanover Trust Co., 350 Park Avenue, New York, New York 10022
- L. W. Pederson, Senior Vice President, Mellon National Bank & Trust Co., Mellon Square, Pittsburgh, Pennsylvania 15230
- James P. Baxter, Senior Vice President, First National Bank, One First National Plaza, Chicago, Illinois 60670
- Ray F. Myers, Executive Vice President, Continental Illinois National Bank & Trust Company, 231 S. LaSalle Street, Chicago, Illinois 60690
- David D. Williams, Senior Vice President & Trust Officer, National Bank of Detroit, Woodward at Fort Street, Detroit, Michigan 48232
- Walter D. Mertz, Senior Vice President, Wilmington Trust Company, Tenth & Market Streets, Wilmington, Delaware 19809
- James E. Mandler, Senior Vice President, Harris Trust and Savings Bank, 111 West Monroe Street, Chicago, Illinois 60690
- Ben Ames Williams, Jr., Executive Vice President, First National Bank of Boston, 100 Federal Street, Boston, Massachusetts 02110
- Van R. Gathany, Senior Vice President, Northern Trust Company, 50 S. LaSalle Street, Chicago, Illinois 60690
- Lester D. Kurth, Senior Vice President, Chemical Bank, 277 Park Avenue, New York, New York 10017
- Arthur V. Toupin, Senior Vice President, Bank of America N. T. & S. A., Bank of America Center, San Francisco, California 94104
- Joseph L. McElroy, Executive Vice President, The Bank of New York, 48 Wall Street, New York, New York 10015
- Edward T. Bartlett, Senior Vice President, Cleveland Trust Company, 916 Euclid Avenue, Cleveland, Ohio 44101
- Robert G. Williams, Senior Vice President, Girard Trust Bank, 1 Girard Plaza, Philadelphia, Pennsylvania 19101
- H. Earl Rettig, Jr., Vice President, United California Bank, 600 S. Spring Street, Los Angeles, California 90054
- Robert L. Hunt, Executive Vice President, Security Pacific National Bank, 6th & Spring Streets, Los Angeles, California 90013
- George A. Hopiak, Senior Vice President & Senior Trust Officer, Wells Fargo Bank, N.A., 464 California Street, San Francisco, California 94120
- Hans W. Wanders, Executive Vice President, Wachovia Bank & Trust Co., N.A., Post Office Box 3099, Winston-Salem, North Carolina 27102
- Walter F. Gray, Executive Vice President, Mercantile-Safe Deposit & Trust Co., 2 Hopkins Plaza, Baltimore, Maryland 21201
- Edward J. Veitch, Senior Vice President, Irving Trust Company, 1 Wall Street, New York, New York 10015

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**MORGAN GUARANTY TRUST CO. OF NEW YORK RESPONSE TO QUESTIONNAIRE  
ACCOMPANYING THE LETTER DATED OCTOBER 23, 1973**

1. \$26,297,000,000 at September 30, 1973.
2. \$18,320,000,000 at September 30, 1973. This figure includes investment advisory accounts where the client exercises full voting power, may revoke our investment discretion at any time and where, in many cases, our investment discretion is limited by guidelines or objectives determined by the client. (If such accounts were excluded, the figure would be \$15,855,000,000.)
3. \$15,863,000,000 at September 30, 1973.
4. Contributions plus income, less payouts, averaged \$850 million per year during the three years ended December 31, 1972.
5. \$14,838,042,000 at September 30, 1973.
6. At September 30, 1973, 71.3% based on book value and 70.4% on market value.
7. Yes. One aggregate holding (International Business Machines common) constituted 0.7% of total investments in discretionary accounts at September 30, 1973.
8. Of a number of stocks in which aggregate discretionary holdings at September 30, 1973 amounted to more than 5% of the shares outstanding, we are listing on the following page those in which the market value of the investment exceeded \$150 million at December 31, 1972. We do not have voting power as to all such shares. (These stocks are among the stocks shown on page 15 of the Trust and Investment Division's public report issued in May of 1973, of which a copy is enclosed.)

Issuer	Total shares outstanding (thousands)	Aggregate discretionary holdings (thousands)	Percent of outstanding
A M P Inc.....	36,954	3,353	9.07
American Express Co.....	51,525	4,249	8.25
Avon Products, Inc.....	57,845	3,509	6.07
Disney (Walt) Productions.....	28,604	2,873	10.04
Kresge (S. S.) Co.....	117,180	7,065	6.03
Louisiana Land & Exploration Co.....	36,253	2,227	6.14
MGIC Investment Corp.....	22,058	2,381	10.78
McDonald's Corp.....	39,529	3,949	9.99
Phillip Morris Inc.....	27,506	2,602	9.10
Polaroid Corp.....	32,852	2,844	8.66
Schlumberger Ltd.....	36,425	3,306	9.08
Squibb Corp.....	22,243	1,661	7.47

9-14. We believe it would be helpful to preface the specific answers to these questions with the following observations: Adoption of generally applicable uniform percentage limitations on holdings of securities does not seem to us an appropriate way of dealing with the considerations of portfolio liquidity and diversification which play an important part in the investment decisions we make. The characteristics of a security, the relationship in size and risk of holdings of such security to other holdings, the requirements, objectives and constraints of the particular accounts in which it is held, and market conditions, are among the pertinent factors in deciding whether the holding has reached a level (in the aggregate, in a particular account or as a percentage of outstanding shares) where limitations on further investment should be imposed or some portion of the holding should be sold. These questions, in our view, are not susceptible of precise or uniform determination in advance but require the making of individual judgments at different times and under varying circumstances.

9. We do not have any such precise or arbitrary limit. Liquidity is an important consideration in every investment decision we make, but an arbitrary percentage or other limit on the aggregate amount which we are permitted to invest in any given security would not in itself assure liquidity for individual accounts.

<sup>1</sup> This report was made a part of the official files of the Committee. Part 15 is reproduced following the answers to the questions.

10. We really cannot quantify prudence in this connection. Each security (and each account) is an individual situation. As stated in the answer to question 9, percentage of aggregate is not a satisfactory guide to liquidity. By setting arbitrary limits in terms of a precise percentage or number, in an uncertain effort to insure liquidity, we might be penalizing our clients by depriving them of investment benefits. For example, appreciation in a security beyond such an arbitrary limit might compel its sale to the detriment of beneficiaries. The whole matter is a question of balance and prudence.

11. Again, we have no arbitrary or precise figures or percentages. As to overall risk, we are firm believers in diversification, and obviously that means we would not invest everything in a single account in the securities of one issuer, nor half of everything. Besides the general principle of diversification, the characteristics of the securities and the objectives and requirements of the particular account should be considered.

12. We believe that balance and prudence are serious obligations of the investment manager. Therefore, the amount of any account's investment in one security could vary widely depending upon such factors as the needs and objectives of that account and the nature of the investment itself, the quality and depth of the management of the company in which the investment is made, the company's position in its field, the type of business it conducts.

13. No, we do not have a self-imposed limitation in this respect. As indicated above, we are highly sensitive to the importance of liquidity, but each security must be judged individually rather than imposing a uniform, arbitrary rule for all.

14. The answer to this question would vary widely from case to case depending on the nature of the particular investment. Of course, aggregate holdings in the upper range of the percentages mentioned in the question would present problems of liquidity requiring careful study on a case-by-case basis.

15. We do not consider such a situation to be desirable, although there are cases in which it cannot be avoided, such as when a bank is named executor of an estate holding a large block of stock in a family-controlled enterprise. Aggregate holdings of a trust department, including ours, may not be an indication of the extent to which the shares may be voted by that trust department. For example, stock held in our investment advisory accounts is voted by the clients themselves without any knowledge on our part of how they vote the stock. In addition, where we have co-trustees in trust accounts the decision as to how to vote stocks is shared with the co-trustees.

16. As stocks held by the Trust and Investment Division are held for investment purposes rather than for control, questions such as this have not been our primary concern. However, there undoubtedly are a number of widely held companies which could be effectively controlled with less than a 50 percent holding.

17. We do not believe that as a practical matter there is a danger in bank trust departments holding and voting controlling interests in many non-financial companies or in several companies within the same industry. A trust department is bound by its obligations as a fiduciary to act always in the best interests of its clients and trust beneficiaries. The legal constraints implicit in the fiduciary role are themselves an effective limitation on the exercise of economic power. Moreover, the competitive realities of the investment management business compel a trust department to concentrate on obtaining the best possible investment results for its clients. These factors result in the buying, selling or holding of securities for investment objectives, not for influence or control. Further, it should be pointed out that a trust department, in holding a particular stock, may be acting for many different accounts, each with its own objectives, requirements and other constraints, and in many cases subject to the approval of clients or co-trustees. In reality it is many holdings.

18. Please refer to answer to question 2. We have voting rights over nearly 100 percent of the shares in the group of accounts aggregating \$15,855,000,000, but no voting rights in the remaining investment advisory accounts.

A committee (consisting of five vice presidents in the Investment Department) is charged with reviewing proposals described in the proxy statements of companies over whose securities we have voting rights. The committee's recommendation as to how a proxy should be voted in the event that it contains a controversial proposal is presented to the Trust and Investment Committee (consisting of eight senior officers in the Trust and Investment Division) which makes the ultimate decision whether to vote in favor of or against a particular proposal.

19. As explained in the response to question 15, shares in investment advisory accounts are voted by the beneficial owners; in trusts where there are co-trustees, voting decisions are shared with the co-trustees. In the cases of pension trusts, it would be extraordinarily difficult, if not impossible, to identify all the numerous beneficial owners at a point in time and to assign to them proportional voting rights. In profit sharing trusts where interests have been vested, the proportionate share of beneficial owners can theoretically be identified. For instance, where the stock of the employer company is held, it is not uncommon for voting rights to be passed to the beneficial owners.

Transferring voting power to employers or unions would create new problems. For example, an employer corporation could find itself in the position of voting the shares of suppliers, customers or competitors.

20. Our investment officers and investment research officers meet from time to time with companies whose securities are held or are being considered for purchase by the Trust and Investment Division. These officers ask questions intended to help in evaluating the investment quality of the securities, but they avoid asking questions which might elicit confidential information. (A copy is enclosed of Morgan Guaranty's rules governing the conduct of its staff in this regard, including specific prohibitions against use of confidential information in connection with securities trading or passing such information along to others.)

21. As previously explained, we do not attempt to exercise influence or control over any company. Accordingly, we feel no such concern. We have indicated in the response to question 20 that an important consideration in discussions with company officers is to avoid asking questions which might elicit confidential information.

22. Investment decisions for discretionary accounts are controlled by the Trust and Investment Committee (consisting of eight senior officers in the Division). Action by this committee is the culmination of a decision making process which is difficult to describe briefly, since it involves the input of approximately 100 investment officers and investment research officers, but an effort to do so follows.

The Investment Research Department (consisting at present of 42 research officers) is charged with providing written reports on companies which are of investment interest to the Trust and Investment Division. These reports are circulated to every investment officer in the Division. The reports are subsequently discussed in weekly investment meetings which are attended by all Division investment officers (numbering 40 at present) and those investment research officers responsible for the reports. The subject matter is discussed thoroughly at those meetings, and as a result the investment officers are in a position to recommend to the Trust and Investment Committee the purchase or sale of securities in light of the circumstances and requirements of each of the investment accounts for which they are responsible. Their recommendations are reviewed by the Trust and Investment Committee which, as mentioned earlier, has final authority to approve or disapprove such recommendations.

There is no so-called "preferred list" of securities from which the Division investment officers select their purchase or sale recommendations. We do, however, feel that, consistent with the fiduciary nature of our activities, the system's flexibility is such as to make the best use of the talents of approximately 100 trained investment and research personnel in the Division.

23. The minimum market capitalization is normally about \$10 million, although we have occasionally made investments in smaller companies.

24. The average weekly trading volume is only one of many considerations which we take into account in making an investment decision regarding a company's securities. Initial investments in companies are often made when they first make a public offering, a time when trading volume is a matter of conjecture.

25. At December 31, 1971, cash balances, including income awaiting payment to beneficiaries, amounted to \$75 million or 0.33% of total assets under the Trust and Investment Division's management. At December 31, 1972, the comparable figures were \$84 million and 0.30%. At September 30, 1973, the comparable figures were \$71 million and 0.27%. (Total deposits of Morgan Guaranty Trust Company of New York at September 30, 1973 were \$14,134 million.)

26. Yes, in accordance with the statutory provisions applicable to trust companies organized under the laws of New York (New York Banking Law § 100-b).

<sup>1</sup> This was made a part of the official files of the committee.

UNITED CALIFORNIA BANK,  
Los Angeles, Calif., November 9, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attached is the response of the Trust Division of United California Bank to your questionnaire of October 23 relating to the role of the stock market.

The phrasing of certain of the questions asked may be interpreted as presuming that a bank trust department might be acting against the public interest. This, I believe, is not the fact nor the intent of the major trust institutions which you have contacted. I sincerely believe that we properly undertake our day-to-day responsibilities and that as an industry, we have exercised an exemplary level of integrity.

Our time was somewhat limited in preparing the response, and if you or the Subcommittee on Financial Markets have additional questions or would desire any clarification of our response, please do not hesitate to contact me.

Sincerely,

H. EARL RETTIG, JR.

Enclosure.

1. What is the total dollar amount of your assets under investment management? \$1,770,534,234 at market as of 12/31/72—(We have interpreted this question to mean assets for which we have investment discretion, either alone or shared with others, such as Co-Trustees, Consultants or Committees.)

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$1,200,000,000 as our best approximation—at present we are unable to break out total assets under management precisely as between (1) sole investment discretion and (2) investment discretion shared with others. We are working on a program intended to accomplish this.

3. What is the total dollar amount of your employee benefit plans under management?

\$838,648,230 at market as of Dec. 31, 1972—(As in question no. 1 we have interpreted this question to mean assets for which we have discretionary investment responsibility, either alone or shared with others.)

4. What is the average annual inflow of employee benefit funds into your management?

\$24,500,000 average per year for last two years.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$725,000,000 as our best approximation—see comment under question no. 2.

6. What percentage of the employee benefit funds under your management are invested in common stock?

61.44 percent—as a percentage of the amount shown in answer to question no. 1.

7. Do you have more than 5 percent of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent?

Please list such securities.

No, as applied to the amount listed above in answer to question no. 1.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

No, as to nationally listed stocks. (We do have certain holdings in excess of 5 percent in smaller, closely held corporations where the stock is received into the account—mainly probate estates.)

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

We do not have a formal, self-imposed limit as it may relate to this particular question but controls are established that do result in effective over-all limitations as evidenced by our responses to the following questions.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?

In general, a 10% maximum limitation should be applied in considering purchases for investment purposes. Received securities could possibly cause a larger percentage to be held at a given point.

11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?

In accounts of \$500,000 or less, not over 15% are to be invested in the securities of any one issuer.

In accounts of over \$500,000, not over 10% are to be invested in the securities of any one issuer.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

Agree with Trust Division policy limits as set forth in question 11.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

We have no formal limitation, but we do apply a rule of thumb limitation of 10 percent.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

10 percent, as indicated in our response to question no. 13.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

No, other than under the circumstances in certain instances of received stock in closely held corporations.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position?

Yes.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

It is not clear whether the reference to "bank trust departments" means individually or collectively. This question is so broad in connotation as to what is involved in "danger" and the various possible assumptions attendant thereto, that we doubt a simple, per se yes or no answer can be definitive. If there were any "danger", it would seem to relate to such economic power in trust departments individually rather than collectively. As evidenced by our preceding answers, we seek to avoid, by our own discretionary actions, the acquisition of controlling interests.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

Approximately 90%. Decisions are made by Trust Division personnel pursuant to established policies and procedures.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

Only if the underlying trust document so provides, otherwise duty lies with the trustee, and it is questionable whether present law would sanction such a delegation. Proxy voting is an integral part of investment management. In many instances the beneficiary probably would not be qualified to make a calculated proxy judgment.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Investment officers of Western Asset Management Company, a wholly owned registered investment counseling subsidiary of United California Bank, which we retain for investment advisory services, do meet with management of companies.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

This is an area of company responsibility. Any information they may give to an investment officer should be in the realm of public information. If the company fulfills this responsibility there is no question of insider information and no anti-trust question.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

Yes, investment decisions are governed by detailed policies and procedures by division trust committees, emanating in the first instance from the Central Trust Committee, which is the directors' committee established by the Board. Procedures involve recommendations from our retained investment counsel, with responsibility for decision making resting with the individual account administrators together with members of the appropriate trust committees acting within the controlling specifications of such policies and procedures.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

\$75,000,000 market value—together with a satisfactory floating supply of shares.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

25,000 shares per week—as a matter of general practice.

25. What is the average size of cash balances of the funds under your management?

Average for the last four quarters ending Sept. 30, 1973 was \$7,303,748 relating to assets in question No. 1.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes, but we exert considerable effort to maintain demand cash balances at a minimum.

BANKERS TRUST Co.,  
New York, N.Y., November 8, 1973.

Senator LLOYD BENTSEN,  
Old Senate Office Building,  
Washington, D.C.

DEAR SENATOR BENTSEN: This is in reply to your letter of October 15, 1973.

I am enclosing my response to the nine additional questions you directed to me in connection with my testimony presented to your Subcommittee on September 25, 1973.

We feel that we understand and appreciate your interest and concern on this subject and that we have cooperated, and will continue to cooperate, on reasonable requests. This has, we believe, been amply evidenced by the responses to your earlier questions contained in my letter of August 1, together with my testimony before your Subcommittee on September 25, which included my responses to the four questions submitted to me on August 7, and the answers to the nine questions referred to above. It is our opinion, however, that your latest questionnaire poses questions that are extremely difficult to answer. We further believe our position on this subject has been made abundantly clear in the responses and testimony referred to herein.

We hope that you consider our cooperation in this matter sincere and again would like to thank you and your staff for the courtesy extended to me during the day of my testimony.

Sincerely yours,

G. U. FORD.

Enclosure.

## QUESTIONS FOR MR. FORD

**Question: 1. What has been the earnings and profitability of the companies in your top 20 holdings?**

**Answer:**

	Net earnings, 1967 (millions)	Net earnings, 1972 (millions)
American Home Products.....	104	173
Avon Products Inc.....	65	125
Burroughs Corp.....	35	88
Eastman Kodak.....	352	546
Eli Lilly & Co.....	54	126
Exxon Corp.....	1,155	1,532
General Electric Co.....	361	530
General Motors Corp.....	1,627	2,163
International Business Machines.....	652	1,279
Johnson & Johnson.....	41	121
Merck & Co.....	89	148
Mobil Oil Corp.....	385	674
Pepsico Inc.....	43	72
Polaroid Corp.....	57	43
Sony Corp, ADA.....	12	62
Standard Oil of California.....	409	547
Texaco Corp.....	754	889
Walt Disney Productions.....	10	40
Westinghouse Electric.....	122	199
Xerox Corp.....	100	250
<b>Total.....</b>	<b>6,427</b>	<b>9,507</b>

**Question: 2. Can you tell the Committee how many companies in your top 20 holdings are currently involved in anti-trust actions? Which ones?**

**Answer:** Four: Eastman Kodak, General Motors, International Business Machines and Xerox.

**Question: 3. What would be the loss of assets in your overall pension fund if the average weighted multiple on your top 20 holdings declined to 20 times earnings instead of their current value on the day you receive this letter?**

**Answer:** This is a rather hypothetical question that is difficult to answer. Under proper investment management we would take appropriate action to assure that such an eventuality would not materialize.

**Question: 4. Can you tell us how many shares of IBM you bought and sold during the week before and the week after the court decision in the Telex case?**

**Answer:**

	Shares bought	Shares sold
Week before.....	60	654
Week after.....	1,179	15,850

The above trades represent a small percentage of our total trust holdings in this security and are not unusual transactions.

**Question: 5. Who are the principal investment research firms employed by your bank?**

**Answer:** Alex Brown, Alliance I, Auerbach Pollak, Bache, Baker Weeks, Bear Stearns, Becker, A. G., Bernstein, S. C., Blyth-Eastman, Butcher & Singer, Clark Dodge, Coenan, Coleman, Cowen, Dain Kalman, Dataquest, Dean Witter, Delafield Childs, Dominick & Dominick, Donaldson Lufkin, Drexel Burnham, DuPont Walston, Eberstadt, Edwards & Handly, Faulkner Dawkins, First Boston, First Manhattan, Goldman Sachs, Hutton, E. F., Janney Montgomery, Jas. Olliphant, Kidder Peabody, Kuhn Loeb, Lawrence, C. J., Lehman Brothers, Loeb Rhoades, McKee, C. S., Merrill Lynch, Mitchell Hutchins, Mitchum Jones, Model Roland, Moore Schley, N.Y. Securities, Oppenheimer, Paine Webber, Parker Hunter, Pennsylvania, Prescott Ball, Prussman Frohlich, Purcell Graham, Robertson Coleman, Rotan Mosle, Rothschild, L. F., Salomon Bros., Saxon, G. A., Shields, Smith Barney, Spencer Trask, Sterling Grace, Tucker Anthony, Wainwright, H. C., Walker-Laird, G. H., Wertheim, White Weld, and William Witter.

*Question: 6. How many brokerage firms do you rely on? Who are the ten largest?*

Answer: 300. Bear Stearns, Becker, A. G., Goldman Sachs, Kidder Peabody, Lehman Brothers, Merrill Lynch, Mitchum Jones, Oppenheimer, Salomon Bros., and Weeden.

*Question: 7. How many director interlocks are there between the members of the board of your bank and corporate executives from companies of the 20 largest holdings in your trust department's portfolio? Will you name the executives and the corporations involved?*

Answer: (1) IBM: W. H. More, T. J. Watson, Jr.; and (2) Mobil: L. A. Lapham, W. P. Tavoulareas.

*Question: 8. Describe in detail the decision-making process in your trust department in buying and selling securities.*

Answer: Our testimony before The Subcommittee on September 25, 1973 stated:

"Our selection of common stocks for investment purposes is based on a number of factors that are continually studied by more than 30 security analysts, who actively follow 800 different companies in 70 industries. They are assisted by a large economics staff and sophisticated computer models. Formulating our investment thinking is the current and, more importantly, the anticipated future state of the United States and world economies. Underlying long-term economic and demographic trends are analyzed to determine how fast the over-all economy can be expected to grow in the next 3 to 5 years, and which broad segments are likely to advance the most rapidly. Within this framework, the faster growing industries are selected for further investigation. Companies within these industries, or those that produce products and/or services that are related to accelerated growth areas, and which have demonstrated ability to continually increase profits on a basis consistent with fulfilling their social obligations, and then chosen as possible investment vehicles.

"The selection process, however, does not end here. Detailed analysis of company balance sheets, profit and loss statements, the quality of management, recent or future changes in product lines, acquisition policies and a host of other internal factors are studied. Also analyzed is the current purchase price of a stock relative to expected future earning ability as well as its relevance to other securities either within or outside its universe. Conclusive data is then discussed with portfolio managers who assess the particular client's goals to determine if the security under consideration can be effectively used to carry out the specific investment objectives of the portfolio.

"Shorter time horizons than the 3 to 5 year outlook, typically 12 months out, are of necessity also considered in the investment process. The cyclical nature of the economy encourages us to be flexible during periods of changing growth patterns resulting in the purchase of securities of companies typically more sensitive to an up-trend in the economic cycle and a reversal of the process in anticipation of a slowdown in the economy's growth rate. During periods of economic uncertainty, companies that exhibit strong growth characteristics and that are also less vulnerable to the overall economic environment generally represent superior investment values. Very short-term special situations, which periodically arise and affect only one company uniquely, are generally not sought out as investment opportunities. We do not encourage the type of short-term grading that results from this approach.

"Once a security is selected for purchase it is not forgotten. Review of the fundamentals within the company, the industry, and the economy, with an eye toward any developments that may dampen the outlook, is a continuing task. Should a change occur we attempt to determine if the factors are temporary, in which case we would not modify our investment stance. If the factors represent a basic shift, we would embark upon an orderly sale of the stock. Thus, as long as the fundamental growth of a company remains relatively strong, we can continue to view its common stock favorably; only the expectation of basic deterioration in future earning power or price considerations of exorbitant proportions would cause us to turn negative.

"While our Investment Research Division, which we currently budget at over \$2 million a year, is the main source of investment ideas, Bankers Trust Company has placed growing emphasis on the role of 50 individual portfolio managers in the investment decision-making process. This replaces an out-dated committee system that promulgates an "approved list" of securities. Accordingly our approach tends to discourage concentration in



that the day-to-day decisions on an individual trust are now made by accountable portfolio managers—within the framework of the bank's overall policy—and often reflect the individual investment style of these managers."

MANUFACTURERS HANOVER TRUST Co.,  
New York, N.Y., November 13, 1973.

Senator LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S. Senate,  
Washington, D.C.

DEAR SENATOR BENTSEN: Enclosed are the answers to the questions which you sent to me in your letter of October 23, 1973. I have made every effort to answer the questions as fully and completely as possible. Necessarily, some of the statistics are approximations because of either the difficulty in extracting and combining information from several sources within the bank or because of occasional definitional problems.

I hope that this material will be of help to you.

Cordially yours,

RODERICK O'NEIL.

Enclosure

1. The dollar amounts of assets under investment management was \$10,930,018,000 as of 12/29/72.

2. The dollar amount of assets over which we exercise complete investment discretion is approximately \$4.45 billion.

3. The total dollar amount of Employee Benefit Plans was \$6,105,262,000 as of 12/29/72.

4. Average annual in-flow of Employee Benefit funds is approximately \$500,000,000.

5. Total dollar amount of Employee Benefit funds under some investment discretion was \$4,541,000,000 as of 6/30/73. In addition, there was \$274,000,000 in Bank managed funds; i.e. the special equity fund, group trust, etc.

6. Common stock holdings represented just over 70% of total Employee Benefit funds invested at the end of 1972.

7. We held 1,796,590 shares of IBM common stock with a market value of \$769,411,669 in our supervised accounts as of the close of business February 15, 1973. This holding represented slightly in excess of 7% of our total supervised assets.

8. Listed below are the securities on our representative list as of the end of the second quarter of 1973, held in accounts over which we exercise some investment authority in those instances where our holdings in such accounts represent more than 5% of the outstanding shares of the company.

Company:	Percent- age of shares
Automatic data processing.....	10.0
Colonial Penn Group.....	5.0
Diebold.....	9.9
Dun & Bradstreet.....	5.2
Fluor.....	7.2
Franklin Life.....	5.9
General Signal.....	5.4
Marley.....	7.7
Prudential Building.....	6.0
Puritan Bennett.....	7.8
Ryan Homes.....	8.9
Simmons Corp.....	5.9
TRW Inc.....	6.3
Watkins-Johnson.....	7.9

9. As a general rule, we restrict purchases of common stocks and/or convertible securities where such purchases would result in Manufacturers Hanover Trust Company, as Trustee, (with or without other co-fiduciaries) owning over 10 percent of the outstanding shares.

10. From experience we believe that the 10 percent rule is prudent.
11. Since many common stockholdings are from decedents and grantors rather than purchased, we do not have any self-imposed limit.
12. The quality of the security is more important than the percentage invested.
13. As above (Number 9).
14. As above (Number 10).
15. We do not believe it would be desirable for a trust department's aggregate holding to represent effective control of a company, since executors' and trustees' duties do not normally include managing corporations' affairs. However, it is sometimes desirable for such holdings to be sufficiently large so that executors' and trustees' views will carry more than normal weight when presented to company managements, i.e., with respect to mergers and acquisitions, corporate policies relating to product safety, employment practices, etc.
16. This would seem to depend on the concentration of share ownership, among other things.
17. None.
18. We have sole voting rights over approximately 46 percent of the common stock in our discretionary investment accounts, shared voting responsibility over 35 percent and no voting responsibility over 19 percent.
19. Since executors and trustees have the duty of safeguarding the investments which they make and since voting is an important part of this process, shares should continue to be voted by executors and trustees in the best interests of their accounts (see answer to Number 15). Also, trust life tenants and remaindermen often have opposing interests (the life tenant preferring maximum income while the remainderman prefers maximum capital appreciation), so that passing through proxy voting to either one would be unfair to the other.
20. Meetings with company managements are considered necessary in both cases.
21. We believe we are well aware of this problem and are careful in our discussions with managements to avoid matters which raise anti-trust issues.
22. Investment officers have complete freedom, within the guidelines mentioned above, to make purchases and sale decisions for their accounts. Purchases, however, must be made from the so-called representative list (285 issues). Securities on this list are monitored by our Investment Research Department and its recommendations are approved at weekly meetings of the Officers' Investment Committee and subsequently ratified by the Trust Committee of the Board of Directors.
23. We generally prefer companies with sales of \$25 million or more.
24. As a general rule, we would prefer to see 5,000 shares or more per week traded on the average before investing in such a company's securities in investment management and/or personal trust accounts. With respect to pension trust accounts, we prefer to see a considerably larger volume of trading (15,000-25,000 shares per week).
25. Average cash balances in accounts under active investment management run approximately \$49 million.
26. All cash collected or received from trust department accounts are recorded on the general ledgers of the bank.

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MELLON BANK N.A.,  
Pittsburgh, Pa., November 28, 1973.

Senator LLOYD BENTSEN,  
Subcommittee on Finance Markets, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR BENTSEN: We enclose herewith our response to your letter of October 23, 1973, addressed to Mr. L. W. Pedersen, Senior Vice President of Mellon Bank, N.A. (successor to Mellon National Bank and Trust Company).

Some questions in the questionnaire which accompanied your letter were, in our view, susceptible of more than one interpretation. We have attempted, however, to answer each question to the best of our ability. In providing information concerning holdings of securities, we have considered only publicly traded securities and, in determining what are discretionary accounts, we have eliminated duplications such as would exist, for example, in the case of a particular trust account's investment in a commingled fund.

Yours truly,

R. E. HUDSON, JR.

1. \$8,388,000,000.
2. \$5,205,000,000.
3. \$4,125,000,000.
4. \$248,000,000 (1970-1972 Period).
5. \$3,380,000,000.
6. 70.5% at Market Value.
7. No.
8. See attached Schedule "A".
9. See attached Schedule "B".
10. Beyond recognizing the general merits of diversification, we have no fixed opinion which could be expressed in terms of percentages.
11. Same answer as No. 9.
12. Same answer as No. 10.
13. Same answer as No. 9.
14. Same answer as No. 10.
15. In respect of publicly traded securities, no.
16. Yes.
17. No. We do not use our holdings to influence the management of companies having publicly traded securities. For the most part, we support management decisions and where we significantly disapprove the company's operating policies and actions, a more likely course of action would be to sell the holding. Where several companies within the same industry are represented in our holdings, we do not use voting or other power to bring about lessening of competition. Our holdings are for investment as permitted by Section 7 of the Clayton Act.
18. The Trust Investment Committee, a Board-appointed committee of officers, approved the manner of voting. The percent figure is not available.
19. This is a matter controlled by the provisions of the trust instruments and by state law. Moreover, in the case of employee benefit plans, the beneficial owners are unknown to us.
20. Yes.
21. See answer to number 17. Companies do not disclose to us non-public information on new product lines.
22. Yes. The Trust Investment Committee is appointed by the Board of Directors of the Bank to approve the investment and disposition of property held in a fiduciary capacity. It meets daily. See Regulation 9 of the Comptroller of the Currency.
23. We have no specified minimum. There would be few original purchases of securities of companies with a capitalization of less than \$30,000,000.
24. No. We often consider the accumulation of a company's stock over a relatively long time period (perhaps a year or more) and therefore we are not overly concerned with daily trading volume. Periodically, large blocks of stock do appear as a secondary or a new stock offering is made that would enable us to acquire stock in size even though weekly trading volume is small.
25. Based on average quarterly market value for the period Jan. 1970 to Oct. 1, 1973, principal cash represented 0.33 percent of the total.

NOTE.—(1) Answers to Questions 1 through 8 are based on 9/30/73 market values; (2) In this report we have given consideration only to publicly traded securities.

#### SCHEDULE A

<i>Companies:</i>	<i>Percent held</i>
Mellon National Corp.....	10.2
Carborundum Co.....	9.0
Holiday Inns—convertible a.....	10.2
Institutional Investors Trust.....	17.9
Naleco Chemical Co.....	10.3
Southwestern Life Corp.....	6.9
American Water Works Co., Inc.....	7.7
Mirro Aluminum Co.....	7.0
Connecticut General Insurance Corp.....	5.6
Jonathan Logan Inc.....	5.2

## SCHEDULE B

The Department does not have any inflexible "self-imposed limitation" with respect to how much of the assets of one portfolio should be invested in one security or how much one security will be represented in the aggregate of discretionary accounts or on the percentage of a company's outstanding shares that the Department's aggregate discretionary holdings will represent. In general, absent special circumstances, the Department endeavors to avoid more than 10% of a particular portfolio in a particular stock. Moreover, the Department endeavors to keep aggregate holdings of a particular stock below 10% of the outstanding shares of the issuing company. Special circumstances in respect of a particular portfolio may exist by reason of its composition at the time of the creation of the trust, special directions in the trust instrument, tax considerations and other factors. The same special circumstances may have a flow-through effect in making difficult adherence to any particular ceiling on aggregate holdings of a particular security.

REPORT OF THE TRUST DEPARTMENT OF THE FIRST NATIONAL BANK OF CHICAGO  
TO QUESTIONNAIRE RECEIVED WITH LETTER DATED OCTOBER 23, 1973 FROM  
SUBCOMMITTEE ON FINANCIAL MARKETS

All values and statistical data are approximate but based on the best information readily available. December 31, 1972, values and statistics used throughout.

1. What is the total dollar amount of your assets under investment management?  
\$8,135,462,000.
2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?  
\$5,288,050,000.
3. What is the total dollar amount of your employee benefits plans under management?  
\$4,808,897,000.
4. What is the average annual inflow of employee benefit funds into your management?  
\$218,000,000.
5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?  
\$3,125,783,000.
6. What percentage of the employee benefit funds under your management are invested in common stock?  
81 percent.
7. Do you have more than 5 percent of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.  
Yes—one—International Business Machines—7.1 percent.
8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?  
Yes—Amfac 6 percent; and TRW 5.3 percent.
9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?  
No.
10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?  
No.
11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?  
Yes—we have guidelines.
12. What is your personal opinion about a prudent limit for portfolio assets in one company?  
No limit if investment is prudent and in accordance with the terms and objectives of individual trust account.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

Yes—Trust Investment Committee has set a limitation that holding in the aggregate may not exceed 10 percent of the company's outstanding shares.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

10 percent.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

This question appears to be based upon the false assumption that holdings are aggregated for investment purposes. This is not the case. While the Trust Department's aggregate holdings may indeed be substantial, such aggregate consists of many trusts and agency relationships. Each such relationship is a separate legal entity with its own governing instrument, donor and beneficiaries. To suggest that this aggregation may be treated for any purpose as a homogeneous unit is to ignore both the legal and practical realities.

It is not and has never been the Trust Department's policy to seek a holding which even theoretically could represent control of any corporation. Many trust customers have substantial holdings in family businesses. Upon the death of such a customer, the Bank as Trustee or Executor, may succeed to such holdings, subject at all times to fiduciary duties and obligations. In such a situation, our Bank makes an effort to include special language in the will or other governing document to place the responsibility for the disposition of such asset, as well as the responsibility for voting the stock, in some outside party.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position?

There are so many possible situations it is impossible to answer this question without consideration of a particular set of circumstances.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

The question appears to be based upon a basic misconception of trust department holdings as huge homogeneous aggregates. So long as trust departments continue to be made up of thousands of separate trusts with different donors, different beneficiaries and different objectives, we see no danger of "concentrations of economic power".

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

65 percent—Responsibility for voting proxies rests with the Common Stock Subcommittee of the Trust Investment Committee, except where the advice of the Trust Investment Committee is desired by reason of the unusual nature of the proposed action. The work of the Common Stock Subcommittee is supported by Investment Research and our Legal Division.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

No—This question suggests a misunderstanding of how trusts operate. In accounts where the governing instrument places the responsibility for voting shares in the trustee, it would be improper to relinquish that responsibility to anyone. A trustee often finds itself moderating between interested parties whose aims conflict. For example, the corporate donor of a pension trust and the employee beneficiaries thereof or the income beneficiary and the remaindermen of a personal trust. To relinquish the voting control to any beneficiary or other interested party, to the potential detriment of another, without express language in the governing document would be a questionable practice. Moreover the power to vote is an essential power needed for the protection of an investment, particularly where such power may be exercised incident to a proposed merger, acquisition or dissolution. This is not to suggest that this decision is made in a vacuum without taking into consideration the interests of the beneficial owners of the trust assets. In fact, each trust is looked at individually in this regard.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

As a matter of course, our investment research personnel have periodic meetings with the management of companies we follow.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No—What we learn from talking to one company is held in confidence and certainly not disclosed to a competitor.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decisionmaking structure.

The investment decision making process has evolved in our Department into a sophisticated system which utilizes and combines the knowledge and expertise of a great variety of people with varying types and degrees of responsibility.

Board investment policy is set by the Trust Investment Committee which is made up of the senior management of the Trust Department. This Committee does not map investment strategy for given accounts, but only addresses broader policy considerations such as the ideal mix between common stocks and bonds, or the favorable or unfavorable outlook of a given industry. This committee has eight members, all of whom are Trust Department officers with considerable investment background and experience. Under the Investment Committee are several more specialized subcommittees:

(a) Common Stock Subcommittee: This Subcommittee's function is to review and approve additions to or deletions from the Trust Department's list of approved common stocks and to review other corporate securities of companies on the list.

(b) Special Investment Subcommittee: This Subcommittee's function is to review and approve the purchase, sale or retention of real estate, tax shelter investments, closely-held securities and venture capital investments held in and for fiduciary accounts where the Bank has investment responsibility.

(c) The head of the Fixed Income section of our Research Department serves as Deputy to the Investment Committee to review and approve the purchase, sale or retention of municipal bonds held in investment responsibility accounts.

(d) The head of the Research Department serves as a Deputy to the Investment Committee to review and approve the purchase, sale or retention of corporate securities of companies which are not included on the approved list of common stocks and which are held in investment responsibility accounts.

(e) In addition, the Senior Investment Officer for each portfolio management area has the responsibility of acting as a Deputy of the Investment Committee to review and approve the purchase, sale or retention of common stocks held in investment responsibility accounts which are assigned to such portfolio management area. Currently there are two such portfolio management areas—The Personal Trust and Investment Advisory Division and the Retirement and Endowment Group.

At the bottom of the decision making structure, but a key element in the organization, is the individual portfolio manager, who has the responsibility of fitting overall policy and strategy established by the Investment Committee and its various subcommittees and Deputies to a given account for which he is responsible. Our system gives the portfolio manager a significant amount of flexibility and autonomy. The Trust Department has 37 portfolio managers. The total aggregate number of employees involved in the investment function is 135, including those in the equity research division, the fixed income division, the real estate division, the limited market division, and the marketing and administrative division.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

Yes—\$200,000,000 except in exceptional circumstances.

24. Is there a minimum amount of average weekly trading volume in a securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

Yes—Ordinarily 10,000 shares daily.

25. What is the average size of cash balances of the funds under your management?

Approximately \$18,000,000.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Cash balances of the Trust Department are held in accounts in the bank's Commercial Banking Department, all in accordance with the provisions of Regulation 9.10 of the Comptroller of Currency, which specifically permits the handling of cash balances in that manner.

CONTINENTAL BANK,  
Chicago, Ill., November 23, 1973.

Senator LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S. Senate,  
Washington, D.C.

DEAR SENATOR BENTSEN: We are pleased to respond to your October 23 letter in which you asked a series of questions in behalf of the Subcommittee on Financial Markets of the Committee on Finance. The numbers in the beginning of paragraph of this letter are references to the numbered items in your questionnaire.

7 As you may know, in August of this year the Continental Bank released to the press a listing of the 50 largest common-holdings stock in the Trust Department. That action was taken in the belief that a voluntary disclosure to newspapers of general circulation rather than merely to a trade journal would accomplish a broader dissemination on this information to the general public. It is our intent to publish a similar list of the December 31, 1973 holdings and to continue to disclose our holdings at regular intervals.

1, 3, 6 As detailed in our Annual Report to the Comptroller of the Currency, the Trust Department as of year-end 1972 had \$8,167,000,000 of reported assets of which \$3,979,000,000 was attributable to Employee Benefit Plans with common stocks composing 73% of the value.

4 Our gross average annual inflow of employee benefit funds, based on a six year average, has been \$485,000,000 including transfers from prior trustees and cash contributions; however, this figure excludes distributions to beneficiaries and transfers which are estimated to average 50% of the gross annual inflow.

2, 5, 7, 8 A number of inquiries in the questionnaire refer to "aggregate discretionary funds," or to dollar amounts over which we "exercise complete investment discretion." Our operating systems do not presently provide a breakdown of those particular categories of assets under management.

9 While we do not have a limit on how much of aggregate discretionary accounts will be allowed in one security "in order to insure liquidity for the individual accounts" we would prefer not to have significantly more than 5% in any one common stock. Over time we have purchased and sold major positions in securities that were widely held throughout our accounts without adversely affecting the liquidity of the individual accounts involved either at the time of purchase or at the time of sale.

11 The matter of how much of the assets of a particular portfolio should be invested in a single security is highly dependent upon the characteristics and objectives of the particular portfolio and also upon the characteristics of any given security. An appropriate level of diversification for one account might well be inappropriate for another. An aggressively managed portfolio for a young professional may have quite different concentrations than a guardianship or a trust under will for an elderly beneficiary who is dependent on the income of the account for her support and maintenance.

13 It has been our practice to limit our holdings of the common stock of any one company to approximately 5% of outstanding shares; however, judgments are made on an individual security basis and we are particularly attentive to the floating supply of a given security.

10, 12, 14 Your questionnaire asks for my personal opinion as to prudent percentages to be invested in a single stock based upon aggregate funds, the assets of a single portfolio and the outstanding shares of a particular company. My personal opinion on any one of these points may be less significant than the collective judgment of our senior investment people. In any event, we believe these are matters of a highly individualistic nature and that each account and each security must be considered on its own. The imposition of a percentage limitation of a company's outstanding shares that could be owned might well inhibit the ability of many smaller and medium sized companies to finance necessary expansion. To obtain meaningful participation in some of those companies may call for an insti-

tutional investor to accumulate a larger percentage of outstanding stock than would be necessary in the case of a company with a larger capitalization. That small or medium sized company should be able to look to its major holders for the necessary additional capital to finance its expansion.

The ability of a major trust department to consider the individual needs and objectives of a given account is one of the principal reasons that corporations, individuals and the courts have selected such institutions for the investment of assets under their control. Any reduction in the flexibility of the investor to recognize and allow for those varying needs and objectives could be interpreted as a disservice to existing and future beneficiaries.

15 We believe it would be improper for a trust department to intentionally acquire holdings of a company's stock for the purpose of enabling the department to effectively control the company. At the same time, we believe it quite appropriate that various owners of a given company may be free to deposit their holdings with a particular trust department for management and that there should be no restraint upon their ability to do so. If those deposits carry with them the possibility of the fiduciary being placed in a position where it could exercise control that result is itself within the control of the depositing shareholders. They should not be obliged to run to some other person, firm or corporation to conduct their affairs. Should some trust department in possession of effective control of a company exercise that control in an improper manner, there are legal remedies now available to any aggrieved party or parties.

16 The reality of effective control of widely held companies would vary from company to company; however, it is likely that some companies could be effectively controlled with less than 1/100 of 1% of outstanding shares (e.g., a strong Chairman of a Board of Directors who may own only nominal qualifying shares).

17 In some quarters it has become popular to raise questions of concentration of economic power in bank trust departments and to follow those questions with inferences of the danger of the possibility of improper use of voting powers. Competition in money management today, and for the foreseeable future, is based upon relative performance. Any bank trust department which expects to survive in this competitive environment must direct its investment activities toward achieving levels of performance that will enable it to retain existing accounts and to attract new customers. Abuses of voting powers would do nothing to enhance investment performance and in any final analysis would prove self-defeating.

18 With respect to those shares over which voting authority is given to us the manner in which they are voted is decided by the Trust Investment Committee whose policies require that all contested matters be submitted to the Committee. Guidelines have been established by the Committee to insure that non-routine proxy matters receive consistent and appropriate consideration.

19 In Employee Benefit Plan accounts we would not be opposed to allowing the beneficial owners of substantial positions in companies to vote those shares, but from a legal standpoint there is real concern that to do so might violate our fiduciary responsibility to the remainder beneficiaries of those accounts. There are also such questions as whether an account for a labor union should be voted by the union officials or by the union members individually; should the shareholders who approved the Employee Benefit Plan of a company vote those shares rather than the employees, etc., etc?

20 On all industries followed by our Equity Research Group, existing policies in the Investment Division call for a management meeting to be made by the analyst responsible for that particular industry at least once each year. These management meetings are not made by our portfolio managers but rather by our analysts.

21 We do not see any problem in the area of the anti-trust laws. Our Trust Department obtains information from various companies solely for the purpose of evaluating the securities of such companies as investments for fiduciary accounts. Its personnel do not have the kinds of contacts with competitors which would create a climate leading to the disclosure of confidential information about product lines and, in any event, our view of the inherently confidential nature of banking relationships would forbid such disclosure.

22 The Board of Directors of the bank has delegated responsibility for the investments of the Trust Department to our Trust Investment Committee, with authority to subdelegate. Over-all policy is established by that Committee, reflecting input from our departments of economics, our computer applications group, our investment research analysts and portfolio advisors. The Stock Selection Committee recommends equity policy and selects individual companies, based on



study by equity research analysts. The Fixed Income Committee recommends fixed income investment policy and selects individual credits (fixed income obligations) for investment.

Trust Real Properties Division recommends policy and investment action concerning real estate assets, including mineral interests. Individual account action is taken by portfolio advisors within the framework of policy decisions. Over-all, approximately 120 people are involved in the decision-making process.

23 The capitalization of companies in which we invest covers a broad range by reason of the varying objectives of individual accounts. Our Investment Committee has not found it appropriate to establish any minimum capitalization figure since such a rule might well limit our ability to respond to the range of account objectives of our customers. At the last count, we held equity positions in more than 2,500 different companies.

24 Weekly trading volume of a company on the exchanges is a matter of interest to us; however, with the existence of the third and fourth markets, it is not the sole determinant of what may be a "practical investment." As noted earlier, the floating supply of a given security is an area of particular interest to us when purchase or sale is under consideration.

25 Historically, the management of funds available for short term investment involved primarily the use of U.S.A. Treasury Bills and other short term Treasury obligations. In recent years, the spreads between the bid and asked prices and the charges that have prevailed on odd lots of those obligations have greatly reduced the yields that were available to the small investor or to the trust account seeking to place amounts smaller than round lots. The Investment Division now utilizes a variety of investment vehicles to keep cash that is not permanently invested in individual accounts on an earnings basis. Among these vehicles are so-called "Master Note" agreements with eleven different companies under which we effect the placement of funds awaiting permanent investment or pending distribution. These arrangements permit us to pool the short term funds of a large number of fiduciary accounts which can add to or liquidate positions on a daily basis. The accounts as a group are able to realize interest on a daily basis, regardless of the period of time invested, at the going rate on 90 day or 180 day commercial paper, whichever is higher. Further, each purchase and sale is executed at par and hence is not subjected to commissions or other charges that would reduce the yield to the individual account. Participation in such Master Note agreements are available at \$1,000 or any multiple thereof. It is our policy to keep the funds available for short term investment placed in one or more of such vehicles.

26 The cash remaining in each account is deposited in our bank.

Please feel free to contact me if you need further information.

Sincerely,

RAY F. MYERS.

CONTINENTAL BANK,  
PUBLIC AFFAIRS DIVISION,

#### CONTINENTAL DISCLOSES TOP 50 STOCK HOLDINGS OF TRUST DEPARTMENT

CHICAGO, August 6.—Continental Bank today disclosed the top 50 common stock holdings managed by its trust department, which has responsibility for more than \$8 billion in assets.

"This move has been contemplated for some time," said Ray F. Myers, executive vice president in charge of the trust department, "since we believe the public interest is served when institutional investors open their portfolio holdings to scrutiny. We are making the announcement now by way of endorsing, in principle, the general concept of voluntary disclosure, which is preferable to the alternative, having such action mandated by Congress."

The total volume of the 50 stocks at mid-year amounted to nearly \$3 billion. However, Myers emphasized that none of these holdings exceeded five per cent of the company's outstanding shares.

The bank expects to publicize similar listings at least annually in the future.

Excluded are several stocks held either subject to outside control or special family circumstances.

The bank's trust department does not purchase on its own decision the stock of Continental Illinois Corporation, the holding company which wholly owns Continental Bank.

Top 50 common stock holdings Continental Bank Trust department (as of June 29, 1973)

Company:	Market Value (millions)
International Business Machines Corp.....	\$211
Eastman Kodak Co.....	210
Texaco Inc.....	166
American Home Products Corp.....	162
Sears Roebuck & Co.....	116
Xerox Corp.....	113
Minnesota Mining & Manufacturing Co.....	111
Merck & Co.....	100
Exxon Corp.....	88
First National City Corp.....	88
Burroughs Corp.....	76
Procter & Gamble Co.....	75
Polaroid Corp.....	73
Avon Products Inc.....	67
Standard Oil Co. (Indiana).....	66
J. C. Penney Co.....	62
Eli Lilly & Co.....	56
Phillip Morris Inc.....	56
American Express Co.....	54
Halliburton Co.....	52
PepsiCo Inc.....	51
General Electric Co.....	50
General Motors Corp.....	49
McDonald's Corp.....	48
Johnson & Johnson.....	47
Coca Cola Co.....	44
Continental Illinois Corp.....	42
BankAmerica Corp.....	41
Chesebrough-Pond's Inc.....	38
Warner Lambert Co.....	37
Chicago Bridge & Iron Co.....	33
Reynolds (R. J.) Industries Inc.....	31
Hewlett-Packard Co.....	30
Dun & Bradstreet Inc.....	28
Household Finance Corp.....	23
Kresge (S. S.) Co.....	20
American Tel. & Tel. Co.....	20
International Flavors & Fragrances.....	20
Dr. Pepper Co.....	20
Searle (G. D.) & Co.....	19
Quaker State Oil Refining Corp.....	18
Consolidated Foods Corp.....	18
Beatrice Foods Co.....	18
Dow Chemical Co.....	18
Nalco Chemical Co.....	17
AMP Inc.....	17
Morgan (J. P.) & Co.....	17
Schering-Plough Corp.....	16
Standard Oil Co (California).....	14
Phillips Petroleum Co.....	13

THE FIRST NATIONAL BANK OF BOSTON,  
Boston, Mass., November 16, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S. Senate,  
Washington, D.C.

DEAR SENATOR BENTSEN: Acknowledging your letter of October 23rd, we have, to the best of our ability, answered the questionnaire of the Subcommittee on Financial Markets of the Committee on Finance of the United States Senate. I might say parenthetically, in relation to question No. 1, that we frequently find ourselves in possession of as much as 100% of the stock of closely-held companies that come to us in an estate, for example. But these are special situations, and we think you really were concerned with publicly-traded stocks.

I must say to you that we have been as accurate as possible but, in some cases, our data was not available in a form responsive to your question, and also there may be some errors in our numbers because of the difficulty of making sure that we have complete discretion on an account, as opposed to having to work with a co-trustee or consultant.

I am sorry we did not get this in to you by November 12, but we did the best, we could.

Cordially yours,

BEN AMES WILLIAMS, Jr.

1. \$6,687 billion as of November 8, 1973.
2. \$5,378 billion.
3. \$4,178 billion.
4. \$404 million.
5. \$3,898 billion.
6. 76%.
7. Current data not available in this form. We estimate International Business Machines Common Stock 6.2%, Eastman Kodak Company Common Stock 5.1%.
8. Zayre Corporation 10.7%, Becton Dickinson and Company 5.7%, Tandy Corporation 5.6%, UAL Inc. 5.5%.
9. Please see answer to number 11.
10. We believe the informal limit as set forth under question 11 represents a reasonable prudent percentage allowable for investment, in the aggregate, in one stock.
11. There is no formal limit on how much of the assets of one portfolio should be invested in one security. However, if a holding exceeds through appreciation 10 percent of a total account value at market, the portfolio manager should in the absence of special circumstances such as account objectives or the possible imposition of unusual capital gains taxes, consider reduction to the 10 percent level in suitable steps usually not more than 10 percent of the holding at a time. This limit has insured that no single security has been in excess of 10 percent of our total aggregate holdings at market at any point.
12. The limitation policy set forth under question 11 represents a prudent limit for portfolio assets in one company in our judgment.
13. We have adopted a limitation of 10 percent of the "float" of a company's outstanding common stock for total investment. "Float" is defined as the actual number of shares outstanding less "management" owned or controlled stock as set forth in the company's latest proxy statement. This limitation is interpreted with common sense by our Trust Investment Committee and moderate variations both higher and lower than the 10 percent guideline are in effect from time to time.
14. This question has been answered in number 13 above.
15. We do not think a trust department should concern itself with control of a portfolio company's management. Purchase and retention of a portfolio stock in any amount is for investment and there is no desire nor intent to influence or control management's corporate decisions. We do not regard ourselves as captive investors and have the option at all times to sell our investment if we believe the company's policies or its management decisions are in conflict with the best interest of our trust beneficiaries.
16. Yes, but the percentage required for effective control would vary widely from company to company and with the type of control which one was attempting to impose.
17. As there is no evidence of which we are aware at this time of this danger when applied to the bank trust department "industry" our answer to this question would be "no."

18. We estimate that we hold voting rights in virtually all of the shares held in discretionary investment accounts. All proxy proposals of a controversial nature are discussed before a Trust Administration Committee which consists of senior trust personnel appointed by the Trust Committee. The decision to vote for or against each proposal is made solely on the basis in our judgment as to what is in the best interest of our Trust beneficiaries. The election of directors or appointment of auditors are voted routinely if there is no stated opposition. If we were satisfied with the director slate or qualifications of the auditor, we would not wish to hold the stock.

19. We have considered the voting of proxies to be the responsibility of the trustee as set forth under accepted trust law. This responsibility in our judgment cannot be delegated to others, and we have voted proxies in accordance with the procedures set forth under question 18 unless there is specific instruction within the instrument to do otherwise.

20. Our security analysts and other senior investment personnel meet at reasonable intervals with the managements of portfolio companies either currently held or being considered for purchase.

21. No. Information obtained from management interviews is for our internal use only. Material which might be considered of a proprietary, confidential nature obtained from company X is not disclosed to company Y, and we would consider such disclosure improper and damaging to our future credibility.

22. A Trust Investment Committee which consists of senior investment personnel is appointed by our Trust Committee. It approves on a quality basis a broad list of securities for general or specific purchase for accounts over which we have investment supervision. A decision to purchase an individual security for an account is made by the portfolio management officer assigned to that account who has sole discretion and responsibility for such purchase.

23. For an equity to be simultaneously useful for all divisions of the Trust Department and receive approval for general trust investment, we believe there should be a minimum "float" (as defined in question 13) of approximately \$50 million. Attractive portfolio companies with smaller capitalization are either approved on a single purchase basis for an account or accounts, or are purchased in a pooled fund specifically authorized for this purpose.

24. No.

25. Average cash balances of the funds under supervision for the month of October 1973 was \$23.004 million which included both income and principal cash. In addition, there was on average \$23,361 million in the form of Cashiers Checks earmarked for payment of security deliveries the following morning. We estimate that principal cash averaged less than  $\frac{1}{2}$  of 1% of the average market value of assets under management.

26. Yes.

CHEMICAL BANK,  
New York, N.Y., November 27, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets,  
Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR BENTSEN: Enclosed is the completed questionnaire which you sent to us with your letter of October 23rd, addressed to my associate, Lester D. Kurth. We regret that we were unable to return this to you by November 12th as requested.

We had some difficulty in completing the questionnaire, primarily because our records with respect to our Personal Trust, Estate and Investment Management Accounts do not readily lend themselves to providing some of the requested data. For example, we currently have approximately 5,038 Personal Trust and Estate Accounts, with an approximate value of \$2,400,000,000. Of this number, roughly 50% or 2,611 accounts give the Bank, as sole trustee, investment discretion. However, our security lists for these accounts are not coded in such a manner that we are able to give you the exact market value or the percentages that may be invested in any individual security. This data is available in our Employee Benefit Trust records and, accordingly, you will note from the questionnaire, that several questions have been answered only with respect to these accounts.

While we regret that we are not in a position to provide you with specific and accurate data on our Personal Trust and Estate Accounts, it is our feeling that this information is far more important to you with respect to our Employee Benefit Accounts. The terminology in your questions referred to "complete investment discretion" is much more relevant to Employee Benefit Trusts than it is to our Personal Accounts.

While a Trust Agreement or a Will may give the Bank sole investment discretion, there are many elements involved in the managing of assets in Personal Accounts that limit that discretion. These include a variety of investment objectives in Personal Accounts, capital gains tax problems which may greatly limit investment discretion and family loyalty to certain stocks. None of these considerations enter into the management of assets in an Employee Benefit Trust where pure investment performance is usually the only objective.

Accordingly, we have never felt it necessary to account for the securities in our Personal Accounts on the basis of whether we had sole or shared investment control.

In addition, as a policy, almost 100% of our Investment Management Agency Accounts, valued at about \$1,200,000,000, are on a non-discretionary basis. In almost all cases, investment changes are made only after the approval of the principal.

Accordingly, while we have not been able to fully answer your questions, we hope that the data we have provided will be of use to you.

Sincerely,

W. PERRY NEFF.

Enclosure.

1. What is the total dollar amount of your assets under investment management? Approximately \$6,600,000,000.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion? We exercise complete discretion over \$2,127,000,000 of assets in our Employee Benefit Accounts.

3. What is the total dollar amount of your employee benefit plans under management? \$2,976,000,000.

4. What is the average annual inflow of employee benefit funds into your management? \$300,000,000.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise investment discretion? \$2,127,000,000.

6. What percentage of the employee benefit funds under your management are invested in common stock? 68 percent.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities. No. 5 percent of our aggregate employee benefit funds would amount to approximately \$100,000,000. We have in these accounts no one security with an aggregate value in excess of this amount.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent? Of our aggregate discretionary holdings in employee benefit accounts, we currently hold approximately 5.45% of the outstanding stock of Hughes Tool Company.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it? While we do not have any self imposed limit, you will note from the answer to question 7 that in no case do we hold more than 5% of our aggregate discretionary accounts in one security.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent? See answer to question 9.

11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security? No.

12. What is your personal opinion about a prudent limit for portfolio assets in one company? It would be unusual to make an initial investment in a security with a market value in excess of 5 percent of the value of a portfolio and I would be inclined to feel that this might be a prudent limit on an original investment.

However, in the event that over a period of time, the value of the investment in relation to the size of the portfolio grows to a percentage in excess (possibly substantially in excess) of 5 percent, which is relatively common, I would be opposed to a policy that would require selling off a portion of a good investment for no other reason than to bring it within a percentage limitation.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts? In discretionary employee benefit trusts, we have a policy which is not necessarily a self imposed limitation to watch carefully those investments that tend to approach 5 percent of a company's outstanding stock. You will note from the answer to question 8, that we currently hold only one security which represents slightly over 5 percent of a company's outstanding stock.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 25 percent, 50 percent? As indicated in the answer to question 13, 5 percent.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so? No. However, it is our feeling that trust holdings are for the purpose of investment and not control. We cannot conceive of a set of circumstances where we would invest in a company in order to gain control.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position? Yes. As you undoubtedly know, there is a presumption in certain statutes that 25 percent or even 10 percent may constitute control.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry? No. Our interest is in investment and not in control. In situations where doubt arises as to the managerial ability of a given enterprise, the investment should and would be disposed of.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted? We very much regret that we do not have this information available. With respect to the second part of the question, proxy material is reviewed by our Investment Research Department which makes recommendations as to how it should be voted. These recommendations are then acted upon by an Investment Committee composed of Senior Officers of the Trust Division.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

With respect to corporate and union clients in our employee benefit accounts, we certainly have no objections to having proxies voted by these clients. We do have considerable question as to whether they would desire to accept such a responsibility. I am certain that you are aware that the great majority of employee benefit trust agreements specifically place this responsibility on the trustee.

With respect to the beneficial owners of Personal Trust and Estate accounts, we feel that the problem is far more complicated. In many instances, there are multiple income beneficiaries which would make the procedure very burdensome. In addition, the interest of the income beneficiary and the eventual remaindermen of the trusts may be in conflict. For example, an income beneficiary may tend to vote proxies in such a manner as to favor his own interests. This, of course, is the reason such responsibilities are vested in a trustee. In summary, it is our feeling that the complications involved in such a procedure would make it highly impractical.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase? Yes.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them? No. It would be most unusual for our Investment Officers to have any information about new product lines of a particular company that are not public knowledge.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure. Securities considered for general use are analyzed by our Investment Research

Department. Recommendations are submitted to a Senior Investment Committee which meets weekly to consider and approve or reject the recommendations. Through this procedure, an approved list known as "Core" of approximately 100 names has been developed. Portfolio Managers are required to keep at least 75% of the equity portion of an account in Core stocks. The balance may be chosen from a broader list of closely followed companies (an additional 150 names) or developed by the Portfolio Manager himself. If the Portfolio Manager departs from these approved lists, he is responsible for developed documentation supporting his investment. Each employee benefit portfolio is reviewed quarterly by an Investment Committee.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization? No.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume? No.

25. What is the average size of cash balances of the funds under your management?

It is impossible for us to give an accurate figure, as we do not account separately for our managed balances as opposed to those not under our control. Each Account Officer on discretionary accounts has the responsibility of keeping cash balances in his accounts fully invested to the extent possible. We would estimate the uninvested cash in managed funds amounts to between  $\frac{1}{4}$  and  $\frac{1}{2}$ % of the value of assets under management.

26. Are cash balances from your trust department deposited on the commercial side of your bank? Cash balances in the Trust Department are recorded on the General Ledger of the Bank as Trust Department balances. They are utilized by the Bank in accordance with current regulations.

#### RESPONSE OF THE IRVING TRUST COMPANY, NEW YORK, N.Y.

1. Dollar amount: \$2,227,205,000.
2. Dollar amount: \$1,696,654,000.
3. Dollar amount: \$1,682,642,794.
4. Average annual inflow: \$129,250,000.
5. Dollar amount: \$806,745,000.
6. Percentage: 80 percent.
7. 5 percent of our total discretionary holdings would be about \$85 million. As of our most recent survey (May 31, 1973) the only issues in our account holdings larger than that were the following:

	Number of shares	Market value	Percent of total
(a) Avon Products.....	1,812,963	\$236,592,674	14
(b) IBM.....	402,874	126,623,610	7

Substantial portions of these two holdings were placed in trusts by our customers. Thus, the amount invested in these securities pursuant to the exercise of our investment discretion may be under 5% of our total discretionary holdings.

8. Yes. As of our most recent survey of marketable holdings (May 31, 1973) we held in discretionary accounts the following:

	Number of shares	Percent of total	Market value
(a) Tropicana Products.....	560,445	5.97	\$17,093,000
(b) Damon Corp.....	349,340	5.38	13,187,000
(c) Bard, C. R.....	479,617	5.42	12,650,000
(d) ICM Realty.....	479,600	15.93	8,633,000

9. No, but care is exercised in acquiring any given security that the total amount held would not hinder our effort if we should decide to dispose of it.

10. We do not believe that a rigid policy expressed in terms of total discretionary funds under management is appropriate. The question of prudence is a function of our confidence in the outlook for a company, its size and financial strength as well as the quality of its earnings and the marketability of its stock.

11. We have no formal limit expressed as a percentage of the assets of any specific portfolio managed, though we believe in diversification. It is rare for us to hold more than 5% of an account in one security except where tax considerations, estate planning considerations or the expressed desires of the parties at interest make it impractical to diversify.

12. The answer to this question is basically the same as the answer to question 10.

13. Again, we do not believe that a rigid policy expressed as a percentage of outstanding shares of an issuer is appropriate. We are concerned about liquidity but think of it as involving a number of factors in addition to size alone. We also consider size of the trading market in the stock, quality of earnings and volatility of earnings.

14. We feel that flexibility should be preserved by reason of considerations suggested in previous comments.

15. This bank does not invest funds held in a fiduciary capacity for the purpose of acquiring the power to control any corporation in whose shares such funds are invested. There are situations, however, in which a group of related individuals, who in the aggregate already control a corporation, may wish to establish trusts for the specific purpose of continuing ownership in the family group after the death of the present owners. In such situations we believe it is appropriate that the trust department of a bank be used to facilitate the legitimate objectives of such persons.

16. Although obviously dependent on the circumstances of the company involved, there are situations in which it would be possible to exercise effective control over a widely held company even though one owned or controlled with power to vote less than 50% of its outstanding voting shares. It is not possible to generalize on whether control could be exercised with "much less" than a 50% position.

17. If the question relates to bank trust departments in the aggregate, we believe existing anti-trust laws adequately protect against various banks acting in concert to exercise such control. Even where the bank has power to vote shares in a corporation, it exercises this power solely for the best interests of the persons beneficially interested in the trust.

18. In general, in accounts where we have investment discretion, we also have discretion to vote proxies. All proxies for which we have power to vote are reviewed individually by experienced trust officers and voted after approval of their recommendations to a senior trust officer.

19. It depends upon where the voting responsibility lies pursuant to the document establishing or governing the particular account involved. If it is the responsibility of the trustee, he must exercise it in whatever manner he deems in the best interest of the account. He may not properly delegate the responsibility to anyone else. The creator of the trust or other fiduciary relationship has the power to determine who should properly vote the shares held by the account. If he wishes such shares to be voted by a party other than the bank, such directions would be stated in the governing instrument.

20. Yes, when we feel such meetings are desirable.

21. It would depend on the particular facts involved; and, in any event, we would be guided by the advice of counsel.

22. A three-man strategy committee in the Trust Investment Division, from time to time adds or removes stocks from a basic list. The immediate decision to purchase or sell by portfolio managers is guided by these judgments.

23. No, although one consideration taken into account in selecting securities for investment is the fact that companies with small capitalizations may present liquidity problems in executing a decision to dispose of such securities.

24. No, though we review trading volume in assessing marketability.

25. Typically, cash balances relating to funds under our management are less than  $\frac{3}{4}$  of 1% of such funds. These cash balances, however, include those of non-discretionary accounts so that if the percentage of cash balances to total assets under *discretionary* management could be determined, that percentage would be still lower.



26. Balances are carried on the general ledger of the bank and are designated as trust deposits.

RESPONSE OF THE WELLS FARGO BANK, SAN FRANCISCO, CALIF.

1. What is the total dollar amount of your assets under investment management? \$2,554,697,000.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion? \$1,400,000,000 (estimated).

3. What is the total dollar amount of your employee benefit plans under management? \$586,000,000.

4. What is the average annual inflow of employee benefit funds into your management? \$65,000,000 (estimated).

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion? \$450,000,000.

6. What percentage of the employee benefit funds under your management are invested in common stock? 72 percent.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent? No, except for three small family owned companies whose shares have no market.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it? Yes, the general limit is 5 percent.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent? Yes, 5 percent or less.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security? Yes, the general limit is 5 percent.

12. What is your personal opinion about a prudent limit for portfolio assets in one company? Yes, 5 percent or less.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts? Yes, the general limitation is 5 percent.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent? The answer to this question of necessity depends upon the specific circumstances and objectives of the accounts involved. At the 10 percent level the Comptroller of the Currency's examiners routinely raise "appropriateness" questions.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so? As a general rule, no.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position? Depends on the distribution of the remainder of the shares; in general, the wider the distribution of a company's shares the smaller the proportion required for effective control.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interest in many non-financial companies? What about several companies within the same industry? The response to this question involves a philosophical personal opinion; therefore, we do not feel it appropriate to respond to the question on behalf of the Trust Division of Wells Fargo Bank. It should be stressed, however, that as trustee we do not seek control of any company under any circumstances and where we obtain control in the normal course of business, we seek to eliminate it wherever possible.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted? 73 percent. In those accounts where we have discretion to vote the shares held the Trust Division decides how they are to be voted with the assistance of the Bank's investment research group.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not? As trustee and legal owner of stock, we have no alternative except to exercise the fiduciary responsibility which has been given to us, i.e. to vote the shares in the best interests of our beneficiaries.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase? Yes.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them? No.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure. In effect, yes. An investment policy committee determines specific portfolio composition criteria and monitors compliance.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization? The capitalization must be of sufficient size to provide a float that results in 25,000-50,000 shares trading each month, a capitalization size that is not fixed in dollars but is, rather, a function of share availability.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume? See above (No. 23). From a practical standpoint, 10,000 shares a week is necessary unless blocks of larger are regularly, if infrequently, available.

25. What is the average size of cash balances of the funds under your management? Total balances, \$11,200,000.00; for 5,739 accounts, average balance, \$1,950.00.

26. Are cash balances from your trust department deposited on the commercial side of your bank? Yes.

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SECURITY PACIFIC NATIONAL BANK,  
Los Angeles, November 18, 1978.

Hon. LLOYD BENTSEN,  
*Chairman, Subcommittee on Financial Markets,  
Committee on Finance, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Enclosed is our response to your letter request of October 23, 1978, seeking information as to the investment activities of trust departments.

Also enclosed is a copy of an address which I presented on November 5, 1973, at the Midcontinent Trust Conference which, I believe, is responsive to the type of information you seek.

You will note from our answers that we do not consider it meaningful to speak in terms of aggregates since we are principally and primarily governed by the language of each of the separate trusts and agencies which we manage. In certain accounts, we are instructed as to the types of securities we may buy. Many accounts hold no securities at all and are invested entirely in real estate or other assets. A number of our accounts include stock of closely held corporations where one of our principal fiduciary obligations is to see to it that the corporations are properly managed. The general question on voting of stock fails to take into consideration the latter type of accounts.

Your forwarding letter indicated that you were seeking information as to the role of the institutional investor in the "stock market". I would presume from this that you are interested in activities relating only to stocks which are marketable and, in fact, are traded on the exchanges or in the over-the-counter markets. We have attempted to respond accordingly to your questionnaire.

It is our view that bank trust departments cannot for legislative, regulatory, or even internal management purposes be viewed as an institutional investor in the sense that mutual funds, insurance companies, and other institutions are so viewed. A bank's trust accounts represent a series of separate and distinct entities which should not and cannot be aggregated.

Should you find any of our responses incomplete or need additional information in connection with your questionnaire, please let me know.

Sincerely,

ROBERT L. HUNT.

Enclosure.

1. What is the total dollar amount of your assets under investment management? \$2,650,000,000. This includes only those accounts for which we have full or shared investment responsibility. It represents less than one-half of the total value of assets in our custody, which total was last valued at \$5.5 billion.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$1,300,000,000. This figure includes some issues where sales are prohibited by governing trust instruments.

3. What is the total dollar amount of your employee benefit plans under management?

\$1,045,000,000. Of this total we have full or shared investment responsibility over \$313,500,000.

4. What is the average annual inflow of employee benefit funds into your management?

The average gross inflow into employee benefit funds, both in new accounts and additions to existing accounts for the years 1971 and 1972, was \$115,000,000. This is the total where our capacity is that of trustee and *includes both investment management and non-investment management accounts*. Please note that these are gross figures which do not include distribution of benefits or accounts distributed in full to successor trustees.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$283,500,000 of the \$313,500,000 referred to in our response to question number 3.

6. What percentage of the employee benefit funds under your management are invested in common stock?

60.7 percent.

7. Do you have more than 5 percent of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

We have determined, from a review of the largest 500 of more than 3,200 equity holdings in our Trust Department, that none of these holdings exceeds 5 percent of the shares of the securities outstanding where we have complete investment discretion. Some accounts in which we have complete investment discretion hold in the aggregate more than 5 percent of the shares of the securities outstanding of certain *closely-held* corporations.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

No.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?

We do not feel that it is appropriate to aggregate for purposes of legislation, regulation, or even account administration, the accounts which we administer in our Trust Department. Each account has its own investment language and investment objective. So far as the amount invested in any one stock, prudence is a function of the circumstances existing in each of the separate accounts in which we have investment responsibility. In addition, it is not possible to place an arbitrary percentage limitation on all stocks since it may be imprudent in some instances to hold less than 1 percent and not imprudent in other instances to hold over 15 percent in any one stock.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

This question appears to cover all accounts with no distinction between those granting investment discretion and those which by their terms require that we purchase or retain any given security. This question also refers generally to "one security" and for many reasons we feel it necessary to limit our responses to equity securities and to trusts and agencies which contain no investment limitations. Thus limited, our answer is no. We refer you, however, to our response to question number 22 which describes the investment decision-making processes and limitations on positions in specific industries.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

In view of question 10 it is assumed that this question is limited to one account and its holdings of one issuer. We have no personal opinion about a prudent limit for portfolio assets in one company. This question can be answered only in terms of the investment power and investment objectives of the account and quality of the issue. A percentage may be prudent with one issue but not prudent with another. See our response to question number 22.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

No. See our response to question number 22. We do not believe it is proper to aggregate discretionary accounts for any purpose and no blanket percentage limitation can properly be applied to accounts if they are aggregated. We have no self-imposed limitations but diversification is achieved as a result of the application of our investment philosophy by individual portfolio managers. We view liquidity as a question to be considered in terms of the availability of the stock and our ability to sell it for cash when required. No limitation can adequately be fitted to all stocks or stock exchanges or to closely held stocks as distinguished from widely held, publicly traded stocks.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

No. See our response to question number 13. Arbitrary percentage limitations are unworkable and inappropriate.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

We do not feel it is appropriate to aggregate our holdings. In our Trust Department we deal with individual accounts which are individually invested. Neither our Bank nor any other bank we know of invests for purposes of gaining control. Our Trust Department has no desire to assume the responsibility for control of a company. What constitutes effective control is not clear to us except that we do not feel an arbitrary percentage limitation can be applied to all corporations from the major publicly held to the small privately owned companies. We do have, however, up to 100% of the stock of certain closely held companies in accounts where control of those companies is included within the fiduciary duties assumed by us.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position?

Please refer to our response to question number 15. We do not know what is meant by effective control and do not believe that across-the-board percentage figures can be applied to all companies.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

We do not purchase stocks with the intent of achieving control responsibility over the issuing company. We assume that "concentration of economic power" as used in this question means the power to control. This question also fails to appreciate that trust departments do not and can not aggregate their total holdings for any purpose since each account must be administered in accordance with its provisions and objectives. We see no danger in bank trust department holdings for this reason. The only danger possible would arise if banks were to act illegally in concert and there are adequate laws to guard against this. In this respect it should

be noted that bank trust departments compete with one another. Please consider the fact that there are thousands of trust departments in the United States with we understand, over 1.2 million separate accounts with millions of persons having a beneficial interest in the assets held. This distinguishes trust departments as so-called "institutional investors" from mutual funds and insurance companies where security holdings are truly institutional in character. It should be noted that one trust department on any key share holder ballot may vote in different and conflicting ways since in some of its accounts the power to vote is either reserved to others or conferred upon others.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

We hold voting rights in the majority of our discretionary accounts. All proxies are carefully screened by a Trust Investment Officer who determines the nature of the matters to be voted upon. Proxies involving other than routine matters are referred to our Trust Investment Committee for determination of the action to be taken. In this connection we subscribe to the Statement of Policy for Voting Shares of Stock Held in Trust Accounts, approved by the Executive Committee of the Trust Division of the American Bankers Association on February 4, 1973.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

No. See our response to question number 18. Customers may and do reserve or confer upon others, the power to vote shares held by our trust department. It would be an exceedingly unwise mandate that these shares held by trust departments be voted by the beneficiaries only, since beneficial owners include minors, incompetent persons, and many who simply do not wish to be bothered by such matters, or who have selected our trust department to take care of such matters for them. We also feel it unwise to require that shares be voted by our "corporate or union client." We assume these terms refer to pension or other retirement systems the beneficiaries of which are sometimes hundreds and even thousands of participants. We see no reason why another corporate entity should vote shares beneficially owned by a multitude of individuals or why it could be assumed that they are better qualified to pass on the investment merits of the proposals. Similarly, we can see no reason why such shares should be voted by a union business agent or other union representative. To tender such votes to all participants in a corporate or union retirement system would involve an inordinate expense and a lack of interest would produce a meaningless vote. In terms of protecting the beneficiaries of those accounts, isn't it more likely that a better and more objective decision would be made by a professional fiduciary than by an entity which may be tempted to cast its vote for motives not associated with the best interests of the beneficiaries?

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No. Our experience has shown that companies do not discuss with our investment officers matters which are not public information; consequently, we do not feel that having our analysts meet with the companies to evaluate management and clarify information raises any anti-trust questions.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

No. Overall investment policy is determined by a committee based on a 3-5 year projection for the economy. Recommended equity-fixed income ratios are established for accounts having various investment objectives. Within the equity sector particular emphasis is placed on the relative attractiveness of investments in an industry rather than on companies. Industry (again, rather than company) diversification guidelines are established to assist portfolio managers. Within this framework portfolio managers then make investments consistent with the individual trust agreement and investment objectives for the particular account.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

No. We are more concerned with the trading activity in the market than with the size of the capitalization of a company. Due to the wide variety of accounts

and the investment objectives of these accounts we invest in companies of all sizes. Please refer also to our response to questions 13 and 14.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

No.

25. What is the average size of cash balances of the funds under your management?

We do not have readily available a breakdown on this total between those accounts where we have complete investment discretion and all other accounts we handle which include many probates, agencies, and custodianships. Cash balances in each account are frequently reviewed to assure that they do not exceed the cash requirements of the account. An analysis over the previous 10 months indicates that the average income and principal cash balance is less than \$4,000 per account.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes.

#### THE CACOPHONY OF CRITICISM, AN ADDRESS BY ROBERT L. HUNT, EXECUTIVE VICE PRESIDENT, SECURITY PACIFIC NATIONAL BANK

As the title in your program suggests, my remarks today will be directed to the critics that have come forth to charge the trust industry with a multitude of sins. The comedian, Fred Allen, once observed "If criticism had any real power to harm, the skunk would have been extinct by now." While we may take some solace in the skunk's continued existence, much of the criticism—and the poorly conceived proposals of the critics—can be quite destructive if allowed to go unchallenged. Accordingly, today I am going to discuss the cacophony of criticism we hear and suggest an approach to offsetting it.

Consider for a moment a phrase from the "Prudent Man Rule" that charges fiduciaries to act as ". . . men of prudence, discretion, and intelligence . . ." would act. Consider further, the fact that thousands of trust departments in this country serve, in various capacities, over 1,200,000 accounts with assets exceeding \$403 billion. Add to this the fact that more than two-thirds of the assets can be withdrawn by the customer at any time. I think it is fair to assume that the public has continued to entrust these assets to us based on their confidence that we will adhere to the principles of the "Prudent Man Rule."

Indeed, adherence to the qualities of prudence, discretion, and intelligence—and I might add honesty, loyalty, and integrity—is essential to the continued existence of the trust industry as we know it, and to its continued success. Our reputation in this respect follows not from paying "lip service" to such ideals but by adopting them as a way of life.

Thus, it is most disconcerting to hear the cacophony of criticism that fills the air today. As we listen to the criticisms, we are left with the impression that the critics are either grossly misinformed or are caught up in their own rhetoric. Perhaps, too, we are being judged by some not accustomed to standards as high as those prevailing among professional fiduciaries.

These critics, through the echoes of their press releases, have attempted to artificially stimulate public and legislative concern where such concern should not exist and is not warranted by the facts. In some cases, we see veneers of high-sounding public interest arguments laid over self-serving motives. Our critics have stigmatized the label of "institutional investor" and have carefully attempted to engineer an image of the institutional investor as a giant monolith that will destroy Wall Street and undermine the vitality of our markets. So intent are they to lay blame somewhere, they have failed or have refused, to recognize, that institutional investors, far from being monolithic, include not only 3,800 trust departments, but also, over 800 mutual funds, and thousands of insurance companies, endowments, pension funds, and others.

In our trust department, for example, we have assets in our care totaling \$5½ billion which represent the combined market value of over 13,000 accounts. Aside from those accounts that are invested entirely in one or more of our common trust funds, none of the accounts has a portfolio exactly like that of any other. This is due, in part, to the fact that we have no investment authority over some 47 percent of our assets and, in many cases, our authority is shared with others or is limited to making recommendations subject to the approval of others. Nevertheless, even in those instances where we have the sole investment responsibility, the composition of each portfolio is influenced or dictated by facts and circumstances unique to it.

Such circumstances include: the types of assets originally received, restrictions on our authority imposed by the creator of the account, needs of the beneficiaries, rights of remaindermen, the tax status of the account, and the tax implications of investment changes. Other factors affecting investment decisions are our particular approach to investing, our current investment policy, and the judgment of the particular portfolio manager to whom the account has been assigned. The composition of each portfolio is further influenced by the size of the account, the risks it can afford to take, and the expected duration of the account relationship.

Of course, none of this is unique to our trust department. This same profile is common throughout the trust industry. From the smallest trust department to the largest, the investment portfolio of each account will reflect its own particular investment objectives. So diverse are such objectives that it is not uncommon to be selling a specific stock out of one account, holding the same stock in another account, and buying it for still another.

Furthermore, from institution to institution, investment philosophy varies. In our case, our investment philosophy is fundamentally oriented. It is based on economic assumptions for the current and succeeding years as well as for a good business year three to five years hence. In our approach, we are more concerned with the prospects for a particular industry, rather than for a particular corporation. Others employ a different approach. Some use a core stock concept; some a value approach; many use an approved list of securities. These approaches are different from one another and produce different results.

I realize that none of this is news to anyone in this audience of persons connected with the trust industry. My sole purpose in describing the trust account relationship and the factors influencing our investment decisions is to offer a clearer perspective to those critics who believe, and would have others believe, that assets of trust departments are some enormous pool of capital, all invested in equity securities, that is being used for all sorts of sinister purposes. Much of the public and official apprehension of the manner in which trust departments carry out their work arises from a failure to understand that each trust is a separate entity. Far from being invested in equities alone, these separate entities have investments in corporate and municipal bonds, real estate and real estate loans, treasury bills, notes and bonds, agency issues, commercial paper, and many other assets. In our own case, assets other than equities represent 40% of all assets in our care. There is also a failure to comprehend that banks actively compete with each other for trust business.

Just what are the critics saying? What is it we hear in the cacophony of criticism? *The Random House Dictionary of the English Language* offers one definition of cacophony as "a discordant and meaningless mixture of different sounds." What we are hearing certainly fits that definition.

Discordant? Yes. The critics claim the existence of a "ground-swell of concern" when in fact, the only sound is their own public utterance. Meaningless? Indeed. Many of the ill-conceived proposals would create the exact opposite effect that their proponents claim to seek.

Our critics have come up with their solutions, including the spin-off of trust departments from their banks, together with various proposals to restrict our investment activities. It is claimed that this is necessary because of the potentials for conflicts of interest and because of the transient phenomenon of the so-called two-tier market.

It has been suggested, however, that separation of trust departments from commercial banks would be beneficial to the trust industry, as this would remove it from the so-called stodgy image of bank trust departments. With due deference to our colleagues from trust companies, many surveys of our public image, whether bank oriented or not, reveal the "stodgy" image. If this is the public's true perception, separation from the banks would do little to change it. But, I think we make a mistake in assuming that the "stodgy" image is one to be avoided. I suspect, that what the public has in mind when they refer to us as "stodgy" is that they consider us to be conservative and incorruptible and with a single-minded dedication to the best interests of our beneficiaries. Actually, they would not have it any other way, and, neither would we.

The broad consequences of the spin-off proposal would be to reduce the ability of trust departments to serve the public, effect a major shift of power within government and, as to one proposal, would create an entirely new Federal bureaucracy.

Moreover, several more fundamental considerations should not be overlooked relative to the separation of trust and banking functions. Such an action would have an adverse effect on bank stockholders due to the reduction in earnings that would result from having to set aside capital for a separate trust company.

Separation would also impact on trust customers by reducing the amount of capital protection which secures their assets. And, ironically, separation of trust and banking functions would result, most likely, in a greater concentration of assets as the smaller, less self-sufficient trust institutions became unable to continue without the support of their parent banks. The attendant absorption of such smaller units by the larger surviving units, could in some regions, reduce the availability of trust services to the public.

To hear our critics talk about the potential for conflicts of interest as a reason for separation of trust departments from their banks, you would think that this was something unique to the banking business. That is not the case. Conflicts of interest and potentials for conflicts of interest, abound in life, and every businessman, every professional man, every politician and every bureaucrat is exposed to them. The significance lies not in their existence or potential existence. The significance lies in how conflicts of interest are avoided and how they are resolved when they do arise. On this score, I submit that we of the trust industry are second to none in the proper treatment of conflicts.

Before leaving the subject of bank/trust image and bank/trust conflict of interest potential, it may be worthwhile to quote a statement appearing in the *New York Times* of October 7, 1973.

In an article, Dr. William Wolman, Vice President and Economist for Argus Research Corporation, observes that ". . . in an era when virtually all other centers of wealth and power are suffering from deep public distrust, the banks are riding high in public esteem." Dr. Wolman goes on to state, "Nowhere is this more visible than in . . . the bank trust department." If this is true—and the growth of accounts and assets entrusted to bank trust departments would suggest that it is—then the critics' claims of a "ground-swell of public concern" seem hollow indeed.

It is just this success, this growth of assets placed in the care of the trust industry, that appears to be the impetus for much of today's criticism of institutional investors. This criticism might be characterized as the "Two-Tier Market Lament." Here, the cacophony rises to a crescendo of proposals, most of which appear to have been developed with little thought as to their possible consequences. And in many cases, the critics—all of whom recite the same high-sounding motivation—are in broad disagreement among themselves with respect to the proposals.

The "Two-Tier Market Lament" has but one theme; it is to assert that the policies and practices of institutional investors—particularly large trust departments—have created a wide disparity between the price/earnings ratios of some stocks and those of others.

Not content with just blaming our industry for the two-tier market, our critics go on to compound the charges by holding us responsible for: the general weakness of stock prices, the current lower levels of trading, the profit "crunch" within the securities industry, and the inability of new corporations to raise capital through equity issues. It is also said that we are such a dominant force in the marketplace that the individual investor has been scared away.

One of our colleagues, Sam Calloway of Morgan Guaranty, has made some incisive comments on the two-tier phenomenon, and he put it rather nicely when he said recently, "Blaming the two-tier market on investors is like blaming a rainstorm on the people who put up their umbrellas." I, like Calloway and others, am of the opinion that the problem is cyclical, not structural. It is not something that has been willfully created.

Rather than being investor-stimulated, the current two-tier market aberration is a product of the economic conditions that have prevailed from the late 1960's through the early years of this decade. During this period, there was a relatively flat trend in corporate earnings, growth was sluggish, inflation was felt hardest in the service industry, and the dollar was overvalued. As a consequence, the majority of Big Board companies, whose profits tend to move with the general economy, had static or lower earnings. In these circumstances, such stocks—quite naturally—feel from investor favor. But there were some corporations, relatively recession-proof, that continued to maintain growth in earnings and dividends and—again quite naturally—the investors placed premiums on such stocks. Thus was born the present gap between the two-tiers of the marketplace. No sinister manipulations by institutions, no wheeling and dealing to create "self-fulfilling prophecies" (a phrase very popular with the critics these days), and no concerted investment strategy by a giant monolithic investor; just the natural forces of the marketplace at work in the classic manner.



But, those very same natural forces are now beginning to swing the pendulum the other way, and, I believe we can begin to observe the two-tier market correcting itself. With the devaluation of the dollar, rapidly rising commodity prices, and the prospect of steadier—albeit inflationary—growth, many of the lower tier stocks are beginning to stir investor interest once again. A recent analysis by our own investment department tends to verify this. Percentage changes of the Standard & Poor's 500 Stock Index, and segments of the index, have been analyzed over two separate time periods: January 1, 1971 to July 31, 1973 and July 31, 1973 to September 20, 1973. A comparison of the results illustrates what may be the precursor of the two-tier market correction in action.

For analytical purposes, the S & P 500 Index was segmented into three categories: basic, moderate growth, and high growth stocks. The 1971-1973 figures showed a percentage increase in the Index of 07.3 percent. Separate percentage change calculations for the three categories clearly showed the nature of the two-tier market, with the High Growth segment reflecting an increase of 67.5 percent, the Moderate Growth category up 4.4 percent and the Basic group down 8.5 percent.

Analysis of the more recent two-month period revealed a significant change in the relative figures. The change in the total Index was nearly flat, up only 0.2 percent. However, the High Growth category was down 6.4 percent, while the Moderate Growth segment was up 2.8 percent, and the Basic Group appears to be coming on with an increase of 6.7 percent. The conclusion seems reasonable that we may be seeing a significant broadening of the market.

	Percent change	
	Jan. 1, 1971 to July 31, 1973	July 31 to Sept. 20, 1973
S. & P. 500.....	+17.3	+0.2
High growth.....	+67.5	-6.4
Moderate growth.....	+4.4	+2.8
Basic.....	-8.5	+6.7

There are, no doubt, other points that could be made to refute the proposition that the trust industry and other institutional investors are responsible for the two-tier market. And, if the lowly skunk can survive his critics, so can we.

There are other, more pernicious, aspects to the criticisms evolving from the ill-conceived proposals put forth by the critics. Among these proposals are:

(1) The imposition of a 5 percent limit on the amount of stock held by any institution in any one corporation;

(2) Limitation on the amount of stock that can be sold in a given period; and

(3) Removal of banks' authorization to market automatic investment service.

It is paradoxical that these very proposals, which the critics submit as cures for all sorts of ills, would in fact, worsen the situation. An examination of the proposals reveals the inconsistencies inherent in them.

The proposals for limiting holdings and the amounts sold have their origins, again, in the misconceptions about the "concentration" of trust department holdings. My previous comments have, I hope, put this point in some perspective. In addition, results of the recent American Bankers Association survey on such matters, adds evidence that the concentration theory is out of focus. For trust departments holding in excess of \$750 million in assets as of December 31, 1972, the survey found an average of 2,566 separate stock holdings; the comparable figure for our department was 3,220. As another index of concentration—or lack of it—the survey asked what percentage of total assets were represented by the departments' top twenty-five holdings. Sixty-eight percent of the trust departments in the over \$750 million assets group reported that their top 25 holdings represented less than 50 percent of their equity assets; for our department, the figure was 24 percent.

When you consider that only 54 percent of our assets are in equities, this means that about only 13 percent of our total assets are represented by our top 25 holdings. Bear in mind, that our top 25 holdings include those equity investments over which we have no say whatever. In fact, as to 3 of our top 25 holdings, 60 percent or more of the holdings are the result of customer direction or the result of the purpose for which an account was established.

I think the message is clear, that in order to put our business and our investments in proper perspective it is not only important that we discuss the fact that we are dealing with a multitude of separate entities, separately invested, but that, even with respect to aggregates, the aggregates must be broken down into their significant components.

The American Bankers Association survey also asked for data concerning the number of equity security orders placed during the first 6 months of this year, categorizing the orders as: below \$100,000, between \$100,000 and \$300,000, and over \$300,000. Twenty banks, all with trust assets over \$2 billion, indicated an average of 87 percent of the orders were under \$100,000, 9 percent of the orders were between \$100,000 and \$300,000, and only 4 percent exceeded \$300,000; our comparable figures were, 94 percent, 4 percent and 2 percent respectively.

Such trading data leaves no indication of an inordinate number of very large trades which might precipitate abnormal market fluctuations. Moreover, it is obvious from the data on holdings, that the trust industry's investment decisions go far beyond the favorite 50 or 70 issues of the upper tier. Nevertheless, the popularity of the upper tier stocks is not denied; such popularity, however, derives from the fundamental economic considerations mentioned earlier, rather than any "herd mentality".

We are fortunate to have had recently some articulate spokesmen offering comments concerning the proposals for limiting holdings and sales of stocks. There is little I can add to their remarks. Suffice it to say that even the most casual analysis of these proposals would reveal their weaknesses: a limit of 5 percent on holdings could seriously reduce investment in lower tier stocks since a 5 percent ceiling could in some cases represent a relatively small investment; a limit on sales of stock would, in effect, create a ceiling on holdings at the sale limit, because no investor would be inclined to lose liquidity. And, as others have noted, both proposals would create innumerable fiduciary dilemmas in deciding which account may hold which security or which may sell.

Aside from such proposals, one group of critics appeared recently; with paid counsel, before the Senate Financial Markets Subcommittee during hearings on the Institutional Investor's Role in the Stock Market. In the course of their testimony, they urged the development of a ". . . legislative framework which would compel the institutions to take a look at (other) investment opportunities." This comment, coupled with later assertions that freedom for investment judgment must "yield to overriding national considerations", makes the message loud and clear that this group is asking for legislation which would require us to make investments, that in our best judgment, we otherwise would not make. This is incredible.

Just what would they expect us to do with such less desirable or imprudent investments? Should we put them in the guardianship account for a veteran or the guardianship account of a minor? How about a conservatorship for an elderly person who can no longer look after his own affairs? Should we put such investments in a private trust that a grandfather has set up to insure that his grandchildren have a proper education, or should we put them in a testamentary trust for a widow of some decedent? And, what about that nest-egg that some self-employed individual has set up for his retirement? What "overriding national considerations" demand this treatment for our beneficiaries just because they have a corporate rather than an individual fiduciary looking after them? Perhaps such less desirable investments should be reserved exclusively for the profit sharing plans of the people who come up with such proposals.

Turning now to the charges concerning the current role of the individual investor in the market, brings me to the third proposal which would seek removal of banks' authorization to market automatic investment service. Our critics' reactions to, and actions against, this service are perhaps the most puzzling part of the cacophony. If we are to accept the claim that the critics are genuinely fearful of the future for the small investor, then it is most difficult to understand their resistance to this service that provides an investment avenue for the small investor.

The automatic investment service was designed specifically as a vehicle to make it easier for the small investor to get into the marketplace. It is actually nothing more than a traditional bank service of acting as an agent for customers in placing purchase and sale orders for securities, through brokers. Utilizing computers and other efficiencies, we are able to provide such a service to the customers at a modest cost. It is, in essence, simply old wine in new bottles.

It should be added that the automatic investment service was developed after surveys showed that this market existed and was not being serviced. A *New York Times* article of September 6, 1973 confirms what our research disclosed; that is, there are several reasons why the small investor is reluctant to invest. Among the reasons were: "seems too complicated", "don't know how to go about buying stock", "don't know anything about Wall Street", or "don't think anyone would do business with someone with little to invest". These attitudes are exactly what the automatic investment service is designed to overcome. The service makes investing so convenient and uncomplicated, that those with as little as \$20 or \$25 a month to invest can participate. And we feel, that when the small investor gets settled into such a program and feels comfortable about buying stocks and wants to buy more, he very well may want the services that a broker can offer.

Amidst all the clamor surrounding the automatic investment service, it is worth remembering that the securities industry has had a similar plan of its own since 1954, but has failed to market it due to indifferent acceptance by brokers who felt the commissions were too small. This earlier plan, the Monthly Investment Plan, is, in some respects, superior to AIS; but, despite its advantages, if it is not readily available to the interested investor, it is not a viable alternative.

Thus, we see the automatic investment service as one of few options available to the small investor, and we feel that this service may be the stimulus needed to introduce, or reintroduce, such investors to the market. It is not, as some critics suggest, a ploy for banks to dominate the securities industry.

On the one hand, the securities industry bemoans the loss of the small investor in the marketplace; on the other hand, they are equally vocal against our industry's attempt to stimulate small investor interest.

It has been said that the brokerage community's fear, is that our industry's role in securities will grow and grow until banks become the basic force in the securities market. However, it is a long way from offering small account investing services to running the brokerage industry out of business. This is especially true when most brokers don't seem to want these small accounts anyway. Dr. Paul Nadler, Professor of Business Administration at Rutgers University, recently commented ". . . the success of the bank programs so far, has resulted really from the failure of the brokerage industry to maintain its interest in the small investor, and in many cases to keep his loyalty and trust."

As I have already acknowledged, the broker's existing Monthly Investment Program is to some extent, superior to our automatic investment service. This being the case, the brokerage industry should be pushing their own service rather than fretting about competition and proposing legislation to stop it. After all, as I see it there is a common goal here, and that is to encourage the consumer to invest in America.

Well then, we have heard the cacophony of criticism and it seems sure to reverberate for awhile longer. I believe that much of the criticism emanates from a misunderstanding of who we are and what we do. In retrospect, perhaps our industry itself, is to blame for some of the "mystique" that surrounds our affairs. Until fairly recently, it never occurred to us that anyone other than a competitor was interested in knowing some of the details of our business. Consequently, we have never felt the need (or desire) to talk about ourselves. And much of what we would have to say is exceedingly dull. Nevertheless, it becomes increasingly evident there are some things that would be of interest to the public, and talking about them can only inure to our benefit.

The American Bankers Association supports disclosure of meaningful information concerning investment activities. To be sure, investing is an important part of our activities. It is, however, only an integral part of a greater relationship of trust and confidence existing between ourselves and our beneficiaries; and I feel that too much emphasis has been placed on the investing aspect. With us, investing is not, as it is with the mutual fund industry, an end in itself. We view investments as merely a means toward accomplishing a much larger goal.

We must go beyond simply disclosing investment transactions. We must do this to maintain the high level of confidence that the public has in us. We must do this to check the possible erosion of confidence that may result from ill-founded criticisms, and we must do this to place our methods, and our operations, in proper perspective for legislators. In order to accomplish these goals, we must be willing to talk more about ourselves, and remove some of the mystery of our operations. If we are mysterious to many of the people in our own banks because of the "wall" that exists between trust and commercial banking, imagine what an enigma we must be to outsiders.

I submit that it is time to discard our traditional low profile and shift from a passive to an active role in getting the whole trust story across. What is needed is a national educational program under the auspices of the American Bankers Association. It is almost certain that such an effort would yield a much better understanding of our industry and the role we play.

In developing a program, we should not lose sight of the fact that this is an era of the consumer. Indeed, consumerism is no longer a "buzz word"; it is a strong and intelligent force that deserves our attention. After all, our beneficiaries themselves are consumers. We are aware that today's consumer is more sophisticated, more skeptical, and more demanding. The demand for truth and honesty has become, and will continue to be, a major factor in marketing and advertising. Inasmuch as truth and honesty are our stock in trade, we would be most effective.

We have a fine industry and a good story to tell. The character and substance of our story is not investments or investing; the character and substance of our story is contained in Fred Whittemore's Aloha Message presented at the close of the recent Western Trust Conference: "Within the Trust business, we are engaged in life's noblest calling, that of helping other people."

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WILMINGTON TRUST Co.,  
Wilmington, Del., November 13, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets,  
Committee on Finance,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR BENTSEN: We are sorry for the delay in submitting the questionnaire but unfortunately our computer records are not available in a form that could readily provide answers to some of the questions. This has resulted in considerable handwork and the consequent delay. It has also necessitated the use of estimated figures as the last basic information we compiled was for the annual Federal Reserve Board report as of December 31, 1972.

An important point to be made is that as trustee we are dealing with a large number of separate accounts, each requiring treatment based on its own individual circumstances. An account make-up that is prudent for one could be imprudent for another. Thus, for example, fixed percentage guidelines could easily result in improper application of our various fiduciary responsibilities, in some cases even to the detriment of the beneficiaries.

From the viewpoint of the economy as a whole, we can also envision long-term difficulties in raising adequate capital funds if narrow limits are set as to the amount our accounts could have invested in any single equity security. Our country has been built on a philosophy of the assumption of risk and it seems that a continuation of national growth with an improving standard of living is dependent on the willingness of those with equity funds to use them in this area. This requires the prospect of a reasonable profit.

Since Senator William V. Roth, Jr. of Delaware is a member of the Committee on Finance, would it be permissible for us to send to him a copy of the completed questionnaire for his information?

Sincerely yours,

W. D. MERTZ,  
Senior Vice President.

1. What is the total dollar amount of your assets under investment management? \$7,016,293,000 (12/31/72).
2. What is the dollar amount of your assets under investment management over which you exercise complete investment discretion? Estimated at \$1,800,000,000.
3. What is the total dollar amount of your employee benefits plans under management? \$2,545,505,000 (12/31/72).
4. What is the average annual inflow of employee benefit funds into your management? Estimated at \$100,000,000.
5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion? Estimated at \$10,000,000.
6. What percentage of the employee benefit funds under your management are invested in common stock? 64.3 percent (22/31/72).

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities. Christiana Securities Co. common—31 percent; Du Pont Co. common—13 percent; and General Motors Corp. common—9 percent. We have excluded all fixed income securities.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent? Christiana Securities Co. common—21 percent; Abercrombie & Fitch—16 percent. We have excluded closely held and family holding companies which are not readily marketable.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it? No.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent? Since as trustee we are working with a large number of accounts and the investments in each are tailored to individual requirements, a general percentage limitation is not meaningful *per se* and can be detrimental.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security? No. In general, diversification is dependent on the objectives of the account and its dollar size.

12. What is your personal opinion about a prudent limit for portfolio assets in one company? See answer to Questions No. 10 and No. 11. We believe fixed limits might be imprudent *per se* in some situations. Such limits might lead to unfortunate results for a trust and its beneficiaries where tax basis is very low or where a special relationship exists between the beneficiaries and the company whose shares are held. There probably are other situations, too.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts? No.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent? See answer to Question No. 10.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so? We would not buy stock with the idea of obtaining enough to effectively control a company. We are investors, not managers.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position? The answer may be "yes", but it is really necessary to know by whom control may be exercised and the percentage of stock required to effect that control would vary widely.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry? No, because stock voting is based on fiduciary responsibilities and the background of the individual accounts involved. Also it is unlikely that one trust department would have a controlling interest in many corporations.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted? This question cannot be answered without a review of the governing instrument in each individual account. As an estimate the percentage is probably quite high. A special committee of investment officers of the bank reviews the proxy statement and determines the action to be taken.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not? No. Voting is an essential part of investment management but we do consult beneficial owners on important environmental or social issues.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase? Our analysts do maintain contacts with many important corporate managements, though not all for obvious reasons.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them? No. In those instances where we must face this question, the businesses are sufficiently different so that such a problem does not exist. It would be a real problem if we were to be a possible link to effect anti-trust action but we are not.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure. The account manager makes the ultimate day to day decisions but all accounts are reviewed at least once a year by the Investment Committee (composed of senior investment, legal and account management officers). Investment selections are made in conjunction with the Investment Division through joint action of account managers and investment officers in regular small committee meetings or by telephone. The Securities Committee (senior analysts) decides on appropriateness of individual securities and general policy.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization? No, but we do consider marketability and supply in investment decisions.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume? No, but as in No. 23 it is a consideration.

25. What is the average size of cash balances of the funds under your management? The basic policy is to invest promptly all principal cash balances to the fullest extent possible. At 12/31/72 time and demand deposits were \$23,144,000.

26. Are cash balances from your trust department deposited on the commercial side of your bank? Yes, except for less than 0.7 percent as of 12/31/72.

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#### RESPONSE OF GIRARD BANK, PHILADELPHIA, PA.

1. What is the total dollar amount of your assets under investment management? \$4,304,144,558.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion? \$1,397,543,000.

3. What is the total dollar amount of your employee benefits plans under management? \$948,236,568.

4. What is the average annual inflow of employee benefit funds into your management? \$50,000,000.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion? \$758,588,000.

6. What percentage of the employee benefit funds under your management are invested in common stock?

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

No.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

No. The establishment of arbitrary limits on the purchase of a single stock is contrary to accepted principals of portfolio management. Account circumstances, prevailing market conditions and future expectations normally dictate the composition of individual portfolios and this, in turn, is reflected in aggregate holdings.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?

See reply to number 9 above.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

No. Informal guidelines suggest that portfolio managers limit investments in any one security to 5-10 percent of the aggregate value of the portfolio. There are cases, however, where account circumstances dictate larger, single holdings. The size of the portfolio, the creator's outside holdings and the inherent riskiness of the investment are important factors to be considered.

12. What is your personal opinion about a prudent limit for portfolio assets? In one company?

See reply to number 11 above.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

See attached Exhibit A entitled "Limitation on Individual Trust Department Stock Holdings".

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?

See reply to number 13 above.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

Not under ordinary circumstances. However, this condition may exist as a result of receipt, in kind, of a large block of stock (not by purchase) from the owner of a family business or a closely held corporation.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

We do not feel qualified to comment on this point since the circumstances surrounding "effective control" differ from company to company.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

Proper exercise of fiduciary responsibility dictates that trust department investments must serve the long term needs and objectives of the accounts in which they are purchased. It is *unthinkable* that a Trust Company could fulfill this obligation and yet purchase or hold securities for self-motivating reasons.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

We hold voting rights in virtually all of our accounts and the Investment Policy Committee determines how the votes are cast. For your information, we have attached a copy of a policy statement entitled "Guidelines for Voting Proxies" and have marked it Exhibit B.<sup>1</sup>

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

The creator of the Agreement of Trust clearly has the right to determine who votes proxies and he usually exercises that right when the instrument is drawn. Trustees are normally bound by those provisions.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes. We consider management contacts as one of a broad variety of public information sources available to us in analyzing the investment security.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

Most corporations have highly developed policies which prohibit disclosure of insider information. Sound, well-managed corporations do not disclose new product or similar such information to investors. As long-term investors we would look dimly on any company that permitted leaks of insider information.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

The Trust Investment Policy Committee initially establishes the broad investment and economic framework from which industry and individual companies are selected for study by our Investment Research and Economics Division. Recommendations of the security analysts are then considered and approved

<sup>1</sup> Exhibit B was made a part of the official files of the committee.

by our Investment Selection Committee. Following this process, individual account managers have the ultimate responsibility for selecting securities from an approved list that best fit the needs of each account. Each of the aforementioned communities is composed of experienced members of the Trust Department's officer group.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

There is no hard and fast rule establishing minimum capitalization guidelines for investment. Market ability is a key determining factor.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

Floating supply must be adequate to accommodate the position we take in a stock.

25. What is the average size of cash balances of the funds under your management?

Less than two-tenths of 1 percent of the assets under management.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes, in accordance with Section 403(c) (iii) of the Pennsylvania Banking Code. Deposits are secured by pledge of United States Government and Commonwealth of Pennsylvania Bonds.

#### EXHIBIT A

##### LIMITATION ON INDIVIDUAL TRUST DEPARTMENT STOCK HOLDINGS

To avoid marketability problems and possible "insider" involvement, it is considered advisable to place limits on total Trust Department holdings of individual stocks recommended for purchase. 5% of floating supply is suggested for guideline purposes, but it is recognized that adherence to an arbitrary figure presents difficulties at the portfolio management level. Instead, Investment List holdings shall be monitored on a regular basis for size, and where such holdings exceed a 5% figure, recommendation for further purchases shall be cleared with the Division Head. Stocks in this category shall be so marked on the Investment List.

HARRIS TRUST AND SAVINGS BANK,  
Chicago, Ill., November 28, 1973.

HON. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S. Senate,  
Washington, D.C.

DEAR SENATOR BENTSEN: In accordance with your request of October 23, we are enclosing a copy of your questionnaire with our responses bearing numbers which correspond with the numbers of the questions.

We regret that the specific information as to values is not current, but it has been our practice to compile such information only once a year in order to fill out an annual report to the Federal Reserve Board. In making this annual report we have not attempted to break down the responsibility into complete, shared or none as this is not called for.

Our last year's report to the Fed showed 5,490 separate accounts—employee benefit trusts, personal trusts, estates and investment advisory accounts, each controlled by a separate document or documents with varying degrees of investment responsibility not only between accounts, but in many instances between some of the securities held within a specific account.

Yours very truly,

JAMES E. MANDLER, Senior Vice President.

Enclosure.

No. 1. The most recent date for which figures are readily available is October 31, 1972. The figures for that date show an aggregate of trust assets under management to be approximately \$6,970,000,000. This figure as so stated is market value for Federal Reserve Board reporting purposes, except that bonds for that purpose were taken at par. Wherever in answer to these questions dollar figures



are given, the dollar figure is from the said report to the Federal Reserve Board, and at the value basis as used in that report.

No. 2. The figures available at this time are not susceptible of being broken down so as to show separate dollar amounts for assets or funds over which we have complete investment discretion, as contrasted with limited discretion, or discretion jointly with others, or no discretion.

No. 3. \$3,393,000,000 on the same basis as referred to in answer to No. 1 above.

No. 4. Based on records which are not necessarily kept with the detail to answer this question with complete certainty (since this detail is not part of our regular accounting procedure), the average for the four years ending November 30, 1969 to November 30, 1972, both inclusive, was \$187,500,000. This figure excludes amounts initially received during such period which consisted of transfers of new business to us from other management.

No. 5. The figures are not available to answer this question for the same reasons as stated above in answer to question No. 2.

No. 6. Estimated at 60% to 70%, the percentage varying in most cases depending on our policy assessment as to the comparative merits of bonds versus stock for particular funds at particular times, and our assessment of the degrees of equity exposure appropriate to each fund or account.

No. 7. No. This answer is based on the records available to us at this time as referred to in the answers to questions No. 1 and No. 2 above.

No. 8.

American Telecommunications Corp., Common—6.8 percent.

Den-Tal-Ez, Inc., Common—6.9 percent.

Globe Amerada Glass, Common—6.9 percent.

Hughes Tool Company, Common—5.1 percent.

G. D. Searle & Co., Common—26.6 percent.

The foregoing data is furnished on the basis that the phrase "aggregate discretionary holdings" is intended to cover securities in respect of which we have complete investment discretion; however, some of the trust documents in respect of the trusts in which certain of the above shares are held, particularly those of G. D. Searle & Co., contain specific language expressly stating the intention of the testator or settlor that the stock should be retained.

We have not listed other equity investments where our aggregate discretionary holdings would exceed 5% in situations where the securities are closely held rather than publicly traded and in situations where the securities are preferred or preference shares which have no voting rights or where the voting power of our holding was insignificant when related to the voting power of the common stock.

No. 9. So far as liquidity standards are concerned we do not entirely relate the amount of investment in a given security to the amount of the fund or account in which the investment is held, as your question might imply. Generally speaking percentages for liquidity are related to the amount of the turnover in the market for that security over the period of the immediately preceding four calendar quarters. In addition, we give consideration to the amount of our investments in any one stock to the ratio which the number of shares in all discretionary accounts holding that stock bears to the aggregate number of shares of that stock outstanding. Using the standards as just stated, we do have a guideline of referring a percentage in excess of 5% of the amount of stock outstanding to our Trust Investment Committee, on a monthly review basis, for determination of whether holdings in excess of the 5% referred to should be retained or reduced and if so in what manner. Similarly we have a policy of referring to the Trust Investment Committee situations where the aggregate discretionary holdings in the Trust Department of a given stock would exceed 20% of the known trading volume of that security in the immediately preceding four calendar quarters.

We might add that we have limited our responses to stock holding because in our opinion it is not meaningful to apply those same somewhat formalistic standards to holdings of evidences of debt of any issuer. As an example, the turnover rate in the marketplace would be, at the best, an uncertain, if viable at all, standard in the case of debt securities.

No. 10. We would not be willing to state that any given percentage you mentioned is prudent or, on the other hand, imprudent, and our unwillingness to so state applies whether the percentage is to be related to the aggregate discretionary funds considering the Trust Department as a whole, or the percentage is to be related to the aggregate amount of the discretionary funds in any particular account. The nature of and particular circumstances and terms applicable to the particular trust would have to be taken into account. This is especially true where the trusts might be generally called "family trusts" (whether under wills or living

trusts), especially where a large part of the value of the fund or trust consists of a high percentage of the stock of a given company. Accordingly we are unable to flatly state that any given percentage is on the one hand prudent and that, on the other hand, a larger percentage is necessarily imprudent. The most we can say is that 10% would probably be the maximum percentage of aggregate discretionary funds in one stock that is publicly traded; but on the other hand there would be many publicly traded stocks in which, despite the 10% guideline, the maximum percentage should be lower.

No. 11. We do have what might be better called "self-imposed guidelines," rather than "self-imposed limits" in this area. This guideline is 20 percent and exceptions to such a guideline would be referred to the Trust Investment Committee for its approval. In all cases the principle of diversification of investments must be and is kept in mind, and necessarily this principle of diversification might lead to a smaller or a larger percentage in a particular issue. As an example larger accounts might well have investments in a larger number of different issues compared to smaller accounts, and as a result the question of exceeding the guidelines would rarely arise. On the other hand, particularly in smaller accounts, selling holdings solely for the purpose of meeting guidelines might result in waste of trust assets due to reduction of net trust assets resulting from tax consequences.

No. 12. The writer's personal opinion is not different than that expressed in answer to question No. 11.

No. 13. We believe the answers to questions No. 9, 10 and 11 fully answer question No. 13.

No. 13. We believe the answers to questions No. 9, No. 10 and No. 11 fully answer question No. 13.

No. 14. The writer's personal opinion would not be different than the answers to questions No. 9, No. 10 and No. 11.

No. 15. Control is not an objective of a trust department's investment policies and does not enter into its considerations; however, at the same time we recognize that in special situations involving stock in nonpublicly held small companies it might become prudent, if not necessary, to have a controlling interest in order to effectively protect the investment, or to carry out the testator's expressed purposes.

No. 16. Yes, depending on what definitions are made of "much less" and of what are "widely held" companies. As an example, depending entirely upon the concentration among other owners of the remaining shares and the degree of co-operation on unanimity or relationship between such owners, it could be that less than 50 percent would be necessary for effective control; but in other cases, depending on the factors referred to it might be necessary to have more than 50 percent in order to effectively control a given company.

No. 17. No.

No. 18. This percentage is not available and would vary from company to company depending on the trust accounts in which shares of that company were held and the language of the trust documents. In the Investment Advisory area, for example, most of the shares for which we have investment responsibility are voted by the individuals or corporations for whom such portfolios are held.

In most of the Employee benefit accounts we have voting responsibility, but in the Personal Trust area there are many accounts whereby the terms of the instrument stock is voted by co-trustees or investment advisors.

No. 19. Your question is most difficult to answer, particularly because it involves so many different policy questions that in themselves could be debated almost endlessly. The difficulties probably stem from the basic fact that it is not the institutions themselves that have the substantial positions. Rather it is thousands of individual accounts which together in the aggregate have the position, and those accounts have in turn more thousands of beneficiaries taken together. Substantial positions in any stock necessarily involve the exercise of judgment and discretion in solving the questions of prudent management which are necessarily involved in that area as indicated in the answers already given to other questions. Voting the shares is an entirely different question which is not governed or decided by the question of whether the holding is or is not substantial nor by the question of whether the substantial holding is or is not prudent. One of the significant reasons we are appointed to serve as trustee or investment agent is in many cases that the settlors, corporations, beneficiaries, etc., want us to handle such matters because of our greater knowledge. We do not decide the question as to whether we are or are not to have voting power, either alone or in conjunction with others. The terms of the instrument and the wishes of the testator or settlor as therein expressed govern that. If, however, by law now passed trustees are not to be permitted to vote where the aggregate holdings are "substantial,"

a whole host of questions arise as to who is to be entitled to vote in lieu thereof. In many if not most cases it would obviously be impractical from time considerations as well due to the large number of beneficiaries involved, or because of lack of interest by the beneficiaries, or some of them, to ask or to require them to vote. In turn serious questions of fairness would arise if the trustee institution is to be simply barred from voting the shares for which it has investment responsibility, since the non-institutional holders would thereby through statutory fiat be permitted to have a disproportionate voting power in respect to their percentage of ownership in the company. We are hardly qualified to answer your question except by in turn asking a whole series of questions, the answer to most of which are beyond our qualifications and expertise.

No. 20. Yes. Investment Research personnel makes periodic calls on companies whose securities are being considered for purchase and in companies whose stocks are approved for purchase. Such contacts are in person at the company's office, by telephone, or by attendance at meetings for analysts conducted by companies. Such contacts are most often with people in the company whose job it is to talk to analysts rather than members of senior management, although in some cases the contacts are members of senior management.

No. 21. Your question poses a hypothetical situation which to our knowledge has never arisen and which we believe from the nature and purposes of investment research is highly unlikely ever to occur. As indicated in answer to question No. 20 the investment research personnel of our institution would in most instances talk only to personnel of the issuer whose job it is to talk to analysts and the subject of new product lines would come up only in that relation, and solely for the purpose of our investment research personnel including facts, if any, with respect to new product lines in the digests given to our investment committees for use in making up their own minds as to the merits of the investment in the securities of that company. Put another way, the investment researchers who talk with management have the job of digesting for use by the investment committees of the Trust Departments (see answer to question No. 22) who will make the investment decision the facts and information they are able to absorb from their conferences as referred to and from other independent research.

No. 22. The appropriate investment policy for any particular account is determined by the particular investment committee to which that account is assigned. There are four such investment committees, one for investment advisory accounts, one for employee benefit accounts, and two for personal trust accounts. Changes in stock-bond proportions to be aimed at for all accounts are governed by a subcommittee called the Investment Guidance Committee of the Trust Investment Committee. Guidelines for industry diversification of common stocks and selection of stocks for our Working List are determined by the Common Equity Committee. The diversification of fixed income securities and the selection of such securities for the Working List are determined by the Fixed Income Committee. Selection of issues for the individual accounts is the responsibility of the particular portfolio manager to whom the particular account is assigned, but only from a list of issues approved by one of the investment committees above referred to as eligible for use.

No. 23. Generally speaking the minimum market value of outstanding shares for any given company would be \$100 million if it is to be a practical investment for individual accounts within our Trust Department. With regard to common stocks held exclusively in commingled funds, the minimum market value of outstanding shares that is generally considered practical is \$10 million.

No. 24. We believe our answers to questions No. 9, No. 10 and No. 11 are to some extent pertinent here. As mentioned earlier, we do have a limitation of aggregate holdings related to the volume of trading. We will not exceed 20 percent of the annual trading volume without approval of the Trust Investment Committee. This would be approximately equivalent to four-tenths of 1 percent on an average weekly basis.

No. 25. This average figure is not readily available, although we do believe that only approximately  $\frac{1}{3}$  of the aggregate cash balances held in the trust department are held in accounts where we have some degree of investment responsibility, duty or right. However, even in those cases, much of this cash would be income cash waiting the specified distribution date and/or funds held to complete purchases of securities which have not yet been delivered by the brokers on settlement date. The daily average aggregate cash balance in the trust department for the first nine months of this year was \$75,571,000 and approximately  $\frac{2}{3}$  of this was held in accounts where we have no investment responsibility, duty or right, such as Custodian, Transfer Agent, Corporate Trustee, and Bond Paying Agent,

etc. In accounts where we have the necessary responsibility, duty or right, our investment managers are charged with the responsibility of investing all principal cash in excess of \$1,000 (just reduced to \$500) and this is monitored at least weekly. We should also point out that this policy of trying to keep cash balances at the minimum results on any given day in any number of accounts being overdrawn rather than having a cash balance therein. Generally the reason for the overdrafts is that deliveries to and from the brokers do not exactly coincide so as to be able to balance inflow and outflow of cash. These overdrafts can amount to substantial sums in the aggregate on any given day, sometimes as much as \$6,000,000.

No. 26. Yes. Under Illinois law all cash balances of our trust department on deposit in our own bank must be and are secured by a lien on securities having an aggregate market value at all times of at least 100 percent of the amount of such trust funds now on deposit. This applies to all cash balances, whether or not we have any responsibility, duty or right with respect to investment of funds in the respective accounts out of which the cash balances arose. Obviously, if such cash balances were not deposited in our own institution, the beneficiaries would not have the benefit of the lien and security above referred to.

THE NORTHERN TRUST Co.,  
Chicago, Ill., November 13, 1973.

Senator LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets,  
Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR BENTSEN: I am enclosing our responses to the questionnaire which accompanied your letter of October 23. We have attempted to keep these relatively brief, but on the other hand I trust that they will be adequate for your purposes.

If we can be of any further assistance, don't hesitate to call.

Very truly yours,

ROBERT F. REUSCHÉ,  
Senior Vice President.

1. What is the total dollar amount of your assets under Investment management?

\$6,459,000,000.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$2,759,000,000.

3. What is the total dollar amount of your employee benefits plans under management?

\$968,534,000.

4. What is the average annual inflow of employee benefit funds into your management?

Three-year average = \$108,000,000.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$658,383,000.

6. What percentage of the employee benefit funds under your management are invested in common stock?

73.86%.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

From time to time, our aggregate discretionary holdings in any one security might exceed 5% of the shares of the outstanding security. Currently, we have no holdings in this category.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

We do not have a self-imposed limit on the amount of discretionary funds that will be allowed in one security. Rather, we attempt to impose limits upon the

percentage of funds that will be committed to any one security in terms of its aggregate common equity market value.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?

See answer above to Question 9. Circumstances will vary so widely as to make a specific single figure percentage inappropriate.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

We vary position size, i.e. limits in our individual portfolios, depending on our specific market strategy. In certain cases, the position size could be as low as a maximum of 2 percent and in others it could range as high as 6 percent.

12. What is your personal opinion about a prudent limit for portfolio assets one company?

Refer to answer to Question 11.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

In the event that our total trust department holdings approach 5 percent of the aggregate market value of the individual company's common shares outstanding, we review the company and the nature of our holdings quite closely to determine whether any further purchases should be allowed. Only in rare instances do we permit additional acquisitions, and in no cases do our purely discretionary holdings exceed this limit.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

Please refer to 13 above.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

No. Our discretionary purchases of common stock are dictated solely by investment considerations.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

We would presume so.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

See answer to Question 15.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

We do not maintain records which readily enable us to tell with statistical accuracy what percentage of the shares in our discretionary investment accounts are voted by us. In determining how such shares are to be voted, the Senior Investment Committees, composed of four senior officers in the Trust Department and the Bank's senior economist have developed general guidelines. In many of these, i.e., election of directors, approval of auditors, etc., we vote in accordance with management requests. On such proposals as stock option plans, elimination of pre-emptive rights, mergers and acquisitions and socially sensitive issues, we treat each case on its own merits.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

In view of our answer to Question 15, we would have no objection to this suggestion. An obvious practical problem is the additional operating expense which might be imposed upon all parties.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

The analysts in our Investment Research Department call on the financial officers of companies held or being considered for purchase to discuss the relevant investment considerations.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

The information that our investment research analysts obtain from companies about their products is available to the investing public at large. Therefore, we see no anti-trust implications in our investment research efforts.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

There are two major committees involved in investment decision making. The first is the Stock Selection Committee which consists of five Senior Investment Officers. Its role is to identify attractive or unattractive stocks using a coding system. The second committee is the Senior Investment Committee whose role is to formulate broad policy. The latter committee consists of three Senior Investment Officers, a Bank Economist and the head of the Trust Department.

23. Is there a minimum capitalization which a company must have before, it is a practical investment for your trust department? If so, what is that capitalization?

Generally speaking, we try to look at investments which have a common stock capitalization of \$100 million at market.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

We have no specific minimums in terms of average weekly trading volume but this is a fact that we consider closely before approving a new investment situation.

25. What is the average size of cash balances of the funds under your management?

Our policy is that no more than \$1,000 of uninvested principal cash will be retained in any account. Funds in excess of this amount are automatically invested in short-term securities.

26. Are cash balances from your trust department deposited in the commercial side of your bank?

Yes.

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#### RESPONSE OF THE NATIONAL BANK OF DETROIT

1. What is the total dollar amount of your assets under investment management? \$6,972,080,860.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion? \$3,112,957,049.

3. What is the total dollar amount of your employee benefits plans under management? \$4,860,204,471.

4. What is the average annual inflow of employee benefit funds into your management? \$439,404,000.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$2,705,830,100.

6. What percentage of the employee benefit funds under your management are invested in common stock? \$3,567,214,038 or 73 percent.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

There are nine companies in which aggregate discretionary holdings exceed 5 percent, ranging from a low of 5.27 percent to a high of 10.1 percent. Seven of the companies are listed on the New York Stock Exchange, one is listed on the American Stock Exchange, and one is traded over the counter. We can attach no significance to the individual names held.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

Our self-imposed limit relates to our judgment as to marketability and varies depending on the floating supply. In no case does the limit amount to as much as 5 percent at the time of acquisition.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2 percent, 5 percent, 10 percent, 15 percent?

The percentage held would vary with market judgment from as little as 2 percent to as much as 9 percent.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

Our diversification schedules may reflect varying percentages from 2 percent to 5 percent at acquisition and as much as 10% in some cases as a result of appreciation.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

A range of 5 percent to 10 percent depending on a number of variables.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

We have no official policy, however current practice is to hold less than 10 percent for liquidity purposes.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

The response would relate to judgment as affected by the available floating supply, the number of holders, historic trading activity, and perhaps other factors, and would vary as between very small companies and very large companies.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

16. Can many widely held companies be effectively controlled with much less than a 50 percent position?

No, if the control is attempted by a holder outside the management group.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

In view of the dominant responsibility (allegiance to the interests of beneficiaries), no evidence of abuse of power in my experience.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

100 percent of shares, exclusive of bank stocks, where voting rights have been specifically disclaimed. Voting is determined by the Trust Investment Committee.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

Interests of beneficial owners and corporate or union clients might be better served if the shares are voted by a professional investment manager able to appraise the impact of proposals in the proxy statement on the investment.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

We are not concerned because managers are aware of the problem and refuse to discuss information which has not been released to the public on new product developments. Our solution is to research this area elsewhere (through independent research organizations, with competitors, other analysts, etc).

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

Yes. The committees establish over-all guidelines (bond/stock ratios, quality standards, buy-hold-sell lists).

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

Yes. Related to the available floating supply. Our current guideline is the ability to acquire \$15 million worth of security over a period of one year.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

We have not established a minimum weekly volume figure in view of significant over-the-counter blockage trading activities not adequately reported.

25. What is the average size of cash balances of the funds under your management?

The amount is nominal relative to the account size consisting of accumulating interest on dividend receipts and sufficient to meet current expenses.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes. Anything above nominal amounts would be invested in appropriate short-term instruments of high quality.

FIRST NATIONAL CITY BANK,  
New York, N.Y., December 3, 1973.

Senator LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets,  
Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR BENTSEN: Further to John W. Heilshorn's letter of November 5, 1973, and in his absence, attached is Citibank's response to your questionnaire.

We trust it will be helpful to you and your Subcommittee. Please do not hesitate to contact us further if it prompts any questions.

Sincerely,

P. W. HESTON.

1. What is the total dollar amount of your assets under investment management?

\$16.5 billion.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$10.4 billion.

3. What is the total dollar amount of your employee benefits plans under management?

\$9.3 billion.

4. What is the average annual inflow of employee benefit funds into your management?

Gross annual additions approximate \$900 million.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion.

\$8.2 billion.

6. What percentage of the employee benefit funds under your management are invested in common stock?

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

Yes, there are 2 instances: IBM 8.8%, Xerox 7.2%, respectively of our total discretionary equity holdings of \$7.7 billion.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

Yes, there are 7 instances: Xerox 5.2%, Motorola 5.3%, Perkin-Elmer 5.4%, Harris-Intertype 6.4%, Huyck 5.5%, Texas Instruments 5.9%, TRW 6.2%.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

We have no specified limit. However, those securities which represent the larger proportion of discretionary accounts are those which, in our judgment, represent well managed successful companies with favorable future prospects. It is the anticipated realization of these prospects which will in the last analysis assure liquidity.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2%, 5%, 10%, 15%?

No specified percentage can always be considered prudent, and any legislated limitation will interfere unnecessarily with the freedom of choice of an asset manager and the free flow of the capital market. Further, clients are fully informed of the diversification strategy by their asset manager, and are, therefore, cognizant of the risks and rewards inherent by concentration and long term holding.

11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?

No. Diversification judgments are made by individual portfolio managers after consideration of such factors as customer preferences and size of account. This is equally true in principle with our common trust funds.



12. What is your personal opinion about a prudent limit for portfolio assets in one company?

There is no consistent, prudent limit. Individual account circumstances have wide range of variation. Similarly the level of our confidence in the future prospects of particular companies varies considerably. Therefore, in our view it is impractical to establish a meaningful finite limit.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

We have a 10% limit of outstanding shares, excluding unusual estate of family trust situations. In general, we exceed 5% of outstanding shares only in those special situations where our level of confidence in the future earnings and dividend prospects of a company are particularly high. If our assessment is correct, we believe that liquidity will be assured by the Company's performance and not by limitations on institutional holdings.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?

Again, no meaningful definitive limit is in our view advisable. Our internal review criteria suggest a 10% limit may be reasonable in most circumstances. Exceptions are necessary for estates, closely held family companies, and small capitalized companies which may be held in certain higher risk portfolios.

15. Do you believe it is desirable for a trust department's aggregate holding to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

As a matter of policy, we do not attempt to control companies. We are unaware of any evidence that suggest other Trust Departments have attempted to do so. Generally speaking, Trust Departments do not have the skills to control and manage companies and their failure to do so properly might involve substantial exposure to liability. When dissatisfied with management, our approach and we believe that of other Trust Departments would be to sell the holdings in the company rather than attempting to take control.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

Yes, although no specific percentage will be uniformly applicable.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

See answers to Questions 15 and 16.

18. What percentage of the shares in your discretionary investment account do you hold voting rights and who decides how they are to be voted?

We hold voting rights for 75% of the shares in our discretionary accounts. The decision on how to vote is made by the investment committees of the portfolio management department after review and recommendations by the Investment Research Department. Controversial issues are reviewed by the Investment Policy Committee, the senior investment committee in the trust department.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not why not?

We do not view our security positions as those of the institution but rather are those of the beneficiaries of the accounts we manage. Therefore, when practical we pass on the vote to the beneficial-owner. In all agency accounts the vote is passed to the owner of the account. In trust accounts if there are co-trustees, we ask them to vote the shares. In those situations where we are sole trustee we vote the shares as part of our fiduciary duty. In personal trusts where we are sole trustee we periodically solicit the opinions of the beneficiaries on typical proxy issues such as environmental or social responsibility matters. We have not found a practical way to pass through the vote in the case of pension funds, but continue to seek solutions in this area.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

The institution does not "own" the positions in the normal sense of the meaning of that word, but rather holds bare legal title in trust. The motivation of self interest by the institution is effectively negated by this distinction. We are not

concerned and we do not undertake to have such discussions, and certainly would not benefit if they took place.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

Yes. The Investment Policy Committee provides broad diversification guidelines to portfolio managers such as percent in broad industry areas (technology, consumer, basic industrial, utilities), amount of short-term reserves, and recommended balance between debt and equity securities. It also determines the criteria used by the Investment Research Department when evaluating individual companies. An approved list of securities is then provided by the Research Department and ratified by the policy committee. Portfolio managers may buy and sell securities from this list, which totals about 160 issues. The approved list is composed of companies which meet established investment criteria, and is not changed due to short-term price fluctuation.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

We have a broad range of accounts, and therefore, primarily consider for investment companies with capitalizations of \$20 million or more with, however, occasional exceptions for smaller companies of particular interest.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

No. We have found trading volume to be very elusive as an indicator of liquidity, as it is impossible to predict volume when the time comes to sell. Therefore, beyond a check with our Trading Department to determine if a minimum position can be established over a period of several months, no guidelines have been established.

25. What is the average size of cash balances of the funds under your management?

As of year-end, 1972 cash balances were .57 of 1% the total assets under management. Obviously, this percentage fluctuates from day to day, but records indicate that over the past two years, this percentage did not exceed .66 of 1%.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Cash balances from all sources (including those of the Trust Department) are part of the general funds of the bank and therefore become an earning asset. In all cases, uninvested cash is kept to a practical minimum (see answer to Question 25), as required by Regulation 9 of the Comptroller of the Currency, and periodically audited by the Comptrollers trust examiners.

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UNITED STATES TRUST CO. OF NEW YORK,  
New York, N.Y., December 10, 1973.

HON. LLOYD BENTSEN,  
*Chairman, Subcommittee on Financial Markets, Committee on Finance,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR BENTSEN: With your letter to me dated October 23, you enclosed a questionnaire relating to the investment activities of our trust department. It has required some time to assemble the required information. We have now completed this task, and our answers are set forth below. We hope and trust you will find them responsive and complete. However, if you require any further information, do not hesitate to let us know.

1. What is the total dollar amount of your assets under investment management?

\$18.3 billion, including not only funds where we are investment manager and custodian, but funds where we are investment adviser but not custodian.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$6.0 billion.

3. What is the total dollar amount of your employee benefits plans under management?

\$3.6 billion.

4. What is the average annual inflow of employee benefit funds into your management?

Between January, 1971, and September, 1973, the average annual inflow of funds to existing and new employee benefit accounts has been \$.38 billion.<sup>1</sup>

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$3.1 billion.

6. What percentage of the employee benefit funds under your management are invested in common stock?

80%.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No, except in the case of International Business Machines common stock, which according to our estimate may exceed 5% of aggregate discretionary funds. (This estimate is based on figures for the total values of large holdings in all accounts under management, since figures for aggregate discretionary funds alone are not available.)

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

Yes. The names of the companies and the percentage of shares we hold in discretionary accounts are as follows:

*Percentage of outstanding shares of common or capital stock held in discretionary accounts*

Name of company:	Percent
Affiliated Bank shares of Colorado, Inc.....	7. 19
Arizona Bank.....	8. 91
Bank of Virginia Co.....	7. 14
Bearings Inc.....	10. 27
Black & Decker Mfg. Co. (common).....	5. 21
Brown Forman Distl. Corp. (class B common).....	9. 87
Caldor Inc.....	8. 06
Cross, A. T. & Co. (class A common).....	8. 56
Coca Cola Bottling Co. NY Inc.....	7. 30
De Soto Inc.....	5. 40
Economics Laboratory Inc.....	5. 08
Fischbach & Moore Inc. (common).....	7. 23
Franzia Bros. Winery.....	17. 70
Freeport Minerals Co.....	7. 35
Heitman MTG Invs. SB I.....	5. 68
Houston Natural Gas Corp.....	7. 36
Houston Oils Ltd.....	5. 53
Lafayette Radio Eltr. Corp.....	5. 34
Lance Inc.....	5. 48
Mallinckrodt Chem. Wks. (class A common).....	11. 86
Marlennan Corp.....	6. 64
Mercury General Corp.....	6. 62
Monumental Corp.....	9. 11
Nashua Corp.....	6. 02
Ohio Sealy Mattress Mfg. Co.....	12. 50
Pillsbury Co.....	5. 35
Pinkertons Inc. (class B common).....	5. 45
Prentice Hall Inc.....	5. 83
Ring Around Products Inc.....	6. 33
Rubbermaid Inc.....	5. 95
Simmons Co.....	8. 75
Simplicity Pattern Co. Inc.....	6. 43
Southern Natural Resources Inc.....	5. 17
Stride Rite Corp. (common).....	7. 78
Tennessee Vy Bancorp. Inc.....	16. 88
Wadsworth Publishing Co. Inc.....	5. 90
Wells Rich Greene Inc.....	6. 33
W.U.I. Inc.....	8. 48

<sup>1</sup> Two accounts of extraordinary size were opened in 1973, but have been excluded from the average to avoid distortion.

9. Does your trust department<sup>3</sup> have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If, so what is it?

See answer to Question 13.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2%, 5%, 10%, 15%?

See answer to Question 14.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

See answer to Question 13.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

See answer to Question 14.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

With reference to our trust department's self-imposed limits on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts (question 9); how much of the assets of one portfolio should be invested in one security (question 11); and the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts (question 13), such limits are determined individually from time to time in the case of each portfolio and each security. We do have a policy against acquiring more than 9% of a company's shares by purchase, but this is a flexible guideline rather than an absolute rule. Exceptions may be made, and the policy itself is subject to change at any time, by a senior officer. With the foregoing exception there is no general limit in terms of a single percentage figure, because the limits depend on many factors which vary widely from case to case and from time to time. Such factors include general economic conditions, the size, strength, and stability of the issuer of the securities, the size and activity of the market for its securities, the situation with respect to control of the issuer (see answers to questions 15, 16, and 17), and most important, the objectives and requirements of the individual accounts in which the securities are held. Also, the Trust Company as trustee, executor or investment manager might be asked by a customer to assume discretionary responsibility for a substantial interest in a company, and in the exercise of that discretion we might retain that property because it is in the best interest of the account beneficiary. One of the Trust Company's strongest traditions is individual and personal attention to the particular objectives and requirements of each customer and his account.

With reference to questions 9 and 13, liquidity for the individual accounts is not always of primary importance in determining such limits. Liquidity for an individual account may be provided by other means, such as short term debt investments, or by cash additions to the account. Other investments may have other objectives, such as appreciation in value over a long term, in accounts where this is an appropriate objective for all or for a portion of the funds.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?

With reference to questions 10, 12 and 14, our opinion is in accordance with our trust department's policy set forth in the answers to questions 9, 11 and 13.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

A trust department's main task is managing investments, and not managing or controlling companies in which investments are made. Accordingly, we believe that generally speaking it is undesirable for a trust department to control a company and, for this reason, it is our policy wherever possible not to assume voting power over investments. The absence of voting power eliminates our ability to control through stock ownership. The securities law's restrictions on sale of "control" shares substantially decrease their investment merit, if this disadvantage is not outweighed by other factors. But there are exceptions to the

<sup>3</sup>The term "trust department" as used here and in other questions is interpreted as referring collectively to all the departments which manage accounts for which the Trust Company has investment management responsibility, whether fiduciary or agency accounts, and whether discretionary or non discretionary.

general rule. The most common exception is where control shares are received, either in fiduciary or agency capacity, from a customer of the trust department, and it is in the customer's best interests to retain the shares, either because they are closely held and not marketable, or for other reasons.

We would not wish to rule out the possibility that the attractiveness of an investment, particularly in a small company, might outweigh the disadvantage of ability to control.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

Yes. However, control cannot always be determined by percentage ownership alone, e.g.—a large minority interest can be outvoted by an even larger minority or a majority interest, or control may be determined by factors other than the power to vote. For example, the chief executive officer, the board of directors, an important supplier, customer, or creditor may control a company even though not a significant stockholder. More important, a widely held company cannot be controlled with a large minority position unless that position includes the power to vote. It is the Trust Company's policy (with rare exceptions which are not significant) not to assume voting power except where it is legally obliged to so as fiduciary, and in such cases, not to use the power to vote to exercise control. See answer to question 17.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

Out trust department does not hold or vote controlling interests in "many non-financial companies." Our trust department is a manager of portfolios, not a manager of businesses, and most of our large holdings are held for many different customers, with varying objectives. Many of such customers have the power to freely direct our actions, and the power to terminate their accounts at any time. It is our policy not to assume voting power over shares held except in cases where as fiduciary we are legally obliged to retain and exercise the power to vote. In such cases, we do not use the power to vote to exercise control, (except in very rare instances, where fiduciary obligations may require it for the purpose of preserving the investment.) Other than as holder of the securities of our portfolio companies, we have relatively few relationships with such companies.

Investment management in the United States is divided among numerous separate and independent individuals, banks, and other organizations. We do not believe that there exists, nor that there is likely to arise, in the United States, any substantial concentration of economic power resulting from the control of "many non financial companies" by bank trust departments. Therefore, we do not believe any further regulation of bank trust departments is needed to prevent such concentration. We think any proposal for further regulation should be carefully studied to ensure that it will not hamper the effectiveness of portfolio management.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

We do not hold voting rights to any shares in our discretionary investment accounts, with rare exceptions which have no significance.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union-client? If not, why not?

Yes, with possible exceptions. It is the Trust Company's policy not to assume or exercise voting power except where as fiduciary it is legally obliged to do so. Exceptions to this policy have occurred, but they are rare, and without significance.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes, in most cases, for investment analysis reasons.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No, because we believe that discussions in which we participate are not in violation of the anti-trust law.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

Overall direction with respect to types of securities which we buy and sell is furnished by the Policy Committee. A stock selection committee reviews the research of our analysts and others, and determines our policy with respect to buying

and selling of individual stocks. Our policy with respect to buying and selling individual straight debt securities (except private placements) is determined by individual officers, and not by committees. Important decisions relating to investment in and administration of private placements are made by a private placement equities committee and a private placement debt committee.

The final decisions concerning purchases and sales in individual accounts are made by the individual portfolio managers of such accounts (and not by committee), following the guidance furnished by the above mentioned committees and in pursuit of the individual investment objectives of the accounts.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

No. This is decided individually in each case. We do have a policy that as a condition for purchase approval, 5% of the outstanding shares of a company must have a minimum market value of \$1 million. This is a flexible guideline, not an absolute rule. Exceptions may be made by a senior officer.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

No. This is decided individually in each case.

25. What is the average size of cash balances of the funds under your management?

For the first 9 months of 1973, the average principal funds awaiting investment in accounts under our investment management was \$77.57 million. This figure includes funds recently delivered into our management for which the investment program has not been completed and the proceeds of recently sold securities in existing accounts which have not yet been reinvested. Also, because our records do not distinguish this purpose, some of the funds we classify as awaiting investment result from sales of securities in order to raise funds for distribution to customers whose accounts do not generate sufficient income for their needs.

Additional "uninvested funds" result from sellers' failure to deliver on the settlement date securities purchased for accounts by the Trust Company. They averaged about \$15 million in the same period. However, these are not truly uninvested funds, because they have been committed to specific investments.

Account income<sup>3</sup> awaiting remittance to customers averaged \$31.5 million in this period. Remittances are directed by customers or others acting in a fiduciary capacity.

As of December 31, 1972, the total value of funds for which we were both investment manager and custodian was \$13 billion.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes.

Sincerely yours,

CHARLES W. BUEK.

THE BANK OF NEW YORK,  
New York, N.Y., December 3, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S. Senate,  
Washington, D.C.

MY DEAR SENATOR BENTSEN: Reference is made to your letter of October 23, 1973 and the questionnaire enclosed.

In accordance with arrangements made by our attorneys, Emmet, Marvin & Martin, with Mr. Robert Best of your office, the time within which to respond was extended to November 30, 1973. Further arrangements were made with Mr. Gary Bushell also of your office to extend the time to December 3, 1973.

I am enclosing your questionnaire with my responses.

Very truly yours,

JOSEPH L. McELROY.

1. What is the total dollar amount of your assets under investment management?  
\$4,640,846,000 as of 2/20/73 per Federal Reserve Trust Department Annual Report for year 1972.

<sup>3</sup> Includes income and principal for guardian and custodian accounts.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

For purposes of this questionnaire the term "Aggregate Discretionary Accounts" has been interpreted to mean accounts where the bank acts as the sole fiduciary or sole investment advisor without investment restrictions other than the prudent man rule.

\$1,632,000,000, approximately.

3. What is the total dollar amount of your employee benefits plans under management?

\$1,337,000,000, approximately.

4. What is the average annual inflow of employee benefit funds into your management?

\$179,000,000, approximately. (1972)

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$598,000,000, approximately.

6. What percentage of the employee benefit funds under your management are invested in common stock?

Approximately 81% of the employee benefit funds under our management are invested in common stock. However, in several cases, we manage only the common stock portfolios of larger funds, the remainder of which are managed by others, including Insurance Companies. The situations referred to are included in the answer to 5.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

Yes. International Business Machines and Eastman Kodak.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

Shares outstanding:

De Witt Drug.....	539, 000
R. E. Dietz Co.....	5, 000

Bank holdings:

De Witt Drug.....	156, 800
R. E. Dietz Co.....	1, 062

Percentage:

De Witt Drug.....	29. 1
R. E. Dietz Co.....	21. 2

Each holding was acquired through an estate.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

No.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2%, 5%, 10%, 15%?

I offer not opinion to this question.

11. Does your department have some self-imposed limit on how much of the assets of one *portfolio* should be invested in one security?

No. Our fundamental standard is the quality of prudence which must be viewed in the context of the specific security under consideration, the purpose of objective of the account, the background of the security in relation to its cost as well as origin, the provisions of the instrument creating the relationship at the Bank.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

A "prudent limit" is inseparable from the considerations mentioned above.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

Generally our total holdings, discretionary and non-discretionary, are no more than 5% of the outstanding shares of any one issue and in all cases less than 10%. There are exceptions to this in trusts or estates where one holding may represent a majority interest. These would ordinarily be relatively small and family controlled (rather than publicly owned) companies. Each issue is examined periodically to assure a reasonable degree of liquidity.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

No. We are committed to managing assets within the purview of prudence for the benefit of our customers. We have no desire to control companies.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

In some cases this can be done. It depends upon the circumstances and generalizations are quite difficult.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

In theory this is possible but in practice it simply does not happen.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

85 to 90%—Proxy Committee.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client. If not, why not?

Institutions, as professional investors, we feel are in a better position to vote the shares but if the customer or creator of the trust wishes, arrangements can be made to allow him to do so. There is, however, difficulty in many instances in identifying the beneficial owners.

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes, where significant positions are held or where purchases are contemplated.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No. Any discussions with companies are limited to publicly-disclosed information under Securities and Exchange Commission standards.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decisionmaking structure.

Yes. Investment Policy is determined by a committee of eight senior Trust and Investment Officers.

The Policy is implemented by portfolio officers and is supervised by Senior Trust and Investment Officers.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is capitalization?

No. We generally should be able to acquire at least \$1 million of the stock and there should be some significant degree of liquidity in the market for the stock.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

No.

25. What is the average size of cash balances of the funds under your management?

\$39,953,000 as of 2/26/73. Portions of these balances which for all practical purposes are indeterminable, represent monies involved in active investment programs and were therefore committed to purchase contracts which had not settled as of that date; or reserves for tax commissions or other expenses due or payable.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes, pursuant to Section 100b of the Banking Laws of the State of New York.

WACHOVIA BANK & TRUST Co.  
N.A./Winston-Salem, N.C., December 6, 1973.

Hon. LLOYD BENTSEN,  
Chairman, Subcommittee on Financial Markets, Committee on Finance, U.S.  
Senate, Washington, D.C.

DEAR SENATOR BENTSEN: Enclosed is the completed questionnaire relating to investment activities which was addressed to Wachovia as one of the twenty-five largest bank trust departments in the country.



As you are aware from my conversation with Mr. Allen, our response was delayed because, based on figures published annually by the "American Banker," our Trust Department does not rank among the largest twenty-five measured by either assets under management or gross annual fees. Based on my telephone conversation with Mr. Allen, I gather that the addressees were selected on the basis of the Federal Deposit Insurance Corporation report entitled, "Trust Assets of Insured Commercial Banks—1972." This report includes only those trust departments associated with insured commercial banks and significantly omits fiduciaries whose activities are conducted by *affiliates* of commercial banks rather than by a *department* of the bank. In addition, this report would not include trust departments of commercial banks which are not members of the Federal Reserve System. The latter consideration is not material when determining the largest twenty-five fiduciaries. To our knowledge, the annual survey conducted by the "American Banker" is the sole authoritative publication providing all-inclusive statistics on the size of trust institutions. Since Wachovia is not among the twenty-five largest in this compilation, we believe that our inclusion in a survey of the twenty-five largest fiduciaries associated with commercial banks would be misleading.

A reading of the questionnaire clearly connotes a preoccupation with the effect of fiduciary investment activities on securities markets and a complete absence of consideration of the effect of such activities on the many millions of individual beneficiaries served. You will note in our responses a dedication to our responsibilities of serving these individual beneficiaries to the best of our ability within the standards of prudence customarily and legally imposed on fiduciaries. We feel strongly that any deviation from such standards through the imposition of broad numerical restraints related to concentration of stock holdings could reasonably be expected to work to the detriment of those individuals, while such deviations may or may not have beneficial effects on the securities markets. Frankly, I question the potential contribution to the capital markets of such restraints but, rather, feel that the seasoned investment judgment and standards of prudence required of corporate fiduciaries will be a self-regulating mechanism. We find existing regulatory agencies constantly alert to concentrations in light of specific circumstances and it is only the consistent above-average earnings performance over long periods of time that has attracted trust investments to certain securities as opposed to others whose records and prospects have been less attractive. There were concentrations in the 1920's, in the 1930's, etc., up to the present time, but such concentrations or fads do change from company to company and industry to industry over a given period of time. Already the "two-tier system," which was of such great concern to you and many others only a few weeks ago, has started to shift and it is my belief that a free securities market is a much sounder crucible than a broad regulatory decree in assuring a viable capital market for American industry.

Sincerely,

HANS W. WANDERS.

1. What is the total dollar amount of your assets under investment management?

\$3,216,600,000.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

\$1,351,900,000.

3. What is the total dollar amount of your employee benefits plans under management?

\$1,113,100,000.

4. What is the average annual inflow of employee benefit funds into your management?

\$55,000,000.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

\$547,300,000.

6. What percentage of the employee benefit funds under your management are invested in common stock?

72%.

7. Do you have more than 5% of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5% of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

Yes. We have discretionary holdings totaling 5.2% of the outstanding shares of beneficial interest of Chase Manhattan Mortgage & Realty Trust. In addition, we have discretionary holdings in excess of 5% of the total outstanding shares of certain companies listed herein where these shares, either in total or in large measure, were contributed to the accounts by our customers: Chatham Manufacturing Company Class A—16.1%; Chatham Manufacturing Company Non-Voting Class B—39.6%; Hanes Corporation—9.4%; Integon Corporation—6.3%; and Flowers Industries—6.07%.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

We do not have a "self-imposed limit" but, rather, a guideline percentage which can only be exceeded with the prior approval of the Investment Committee. When our aggregate holdings reach 7% of total shares outstanding in a company, the situation is reviewed by our Investment Committee. This Committee must specifically approve a further increase in our holdings of the security, which would occur only in unusual circumstances.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock? 2%, 5%, 10%, 15%?

In my opinion, it would be inappropriate and detrimental to our trust beneficiaries to set a specific percentage limit on our aggregate holdings of one security as a standard of prudence and to, thus, deem holdings in excess of this percentage as imprudent. The individual circumstance of each fiduciary, acting in the best interests of its customers' objectives, can and does vary substantially. It is probable that the limit of concentration appropriate for a \$10 billion fiduciary would differ substantially from that of a fiduciary managing \$20 million in assets.

11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?

We currently maintain guidelines calling for a typical maximum holding of 10% of the portfolio in a single security (at time of purchase). This guideline is lowered for the less mature and smaller capitalized companies. Exceptions to these guidelines are reviewed by senior investment personnel.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

Such a universal standard would pose monumental problems for a fiduciary from both a legal and practical standpoint. For instance, receipt of securities other than by purchase is frequently outside the fiduciary's control or without its prior knowledge. A universal standard could result in situations requiring sale of a given security by the fiduciary even though its investment judgment is to the contrary. Thus, such a standard could require allocation and rationing of a given security which would inherently favor one account over another and would force the fiduciary to compromise its prime responsibility to act in the best interests of each individual beneficiary at all times. It would also lessen the ability of the fiduciary to accomplish the objectives of its trust customers.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

We use a guideline rather than a mandatory limitation. This guideline is 5% of total outstanding shares, or 6% of estimated "floating supply," whichever is less. This guideline is exceeded under unusual circumstances, often related to purchases of smaller, developing companies, with the specific approval of the Investment Committee.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold? 2%, 5%, 10%, 15%, 25%, 50%?

I do not believe that prudence, in the context of a fiduciary standard, can be numerically tied to total percentage holdings of outstanding shares in a company. As indicated in the response to question No. 10, the individual circumstances of the fiduciary in meeting beneficiaries' objectives should be the criterion.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

This question would appear to presuppose control as a purpose of the fiduciary and to assume a monolithic intent as regards the investment it makes on behalf of its beneficiaries. Such a supposition is totally foreign to a fiduciary's clear responsibility to act solely in the best interests of its individual beneficiaries. The desirability of control or lack thereof on an aggregate basis is immaterial.

16. Can many widely held companies be effectively controlled with much less than a 50% position?

Yes.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

On both questions, any danger is more imagined than real. An examination of the actions of corporate fiduciaries over the years provides convincing evidence that they have upheld their obligations to vote holdings with a dedication to the best interests of the beneficiaries involved. These actions are scrutinized closely by trust regulatory agencies and by the Department of Justice in relation to anti-trust matters. Statutory remedies are presently available through the courts should abuses occur.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

Our discretionary investment accounts generally consist of trust accounts or other fiduciary relationships and, thus, the fiduciary is required to vote all proxies received. Proxies are voted by the Trust Investment Committee or in accordance with policies and guidelines established by the Trust Investment Committee.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

In fiduciary relationships, the trustee is legally obligated to vote proxies and can only rarely delegate voting. In most relationships, the beneficiaries are less familiar with the companies involved and rely on the investment manager who knows the company and bought the stock to make an informed vote. (Where it is appropriate to do so, we pass proxies to beneficiaries for voting on request.)

20. Do your investment officers meet with the management companies held by the trust department or of those which are being considered for purchase?

Yes, in instances where, in our judgment, satisfactory in-depth, institutional research is not available.

21. Are you concerned about the anti-trust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No. The essence of the relationship between a fiduciary and its client is confidentiality; hence, few, if any, are better equipped than corporate fiduciaries to understand and maintain confidences. Today's SEC disclosure requirements have largely made such concerns a matter of historical interest. All, save the most naive corporate executive, would refuse to divulge "non-public" information of this nature to an analyst. Our primary interest in visiting companies is to confirm our analysis of public data and to develop a "feel" for the competence of management.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decision-making structure.

Yes. The decision making process originates in our Research Department on the basis of economic and security inputs and analysis. Following in-depth analysis in the Research Department, recommendations are reviewed by a Committee composed of senior representatives of Research, Portfolio Management, and Investment Department management. Decisions on overall investment policy and the determination of criteria which security issues must meet for use in fiduciary accounts are the responsibility of the Trust Investment Committee. The individual Portfolio Managers make the final decision concerning the suitability of a given security issue for their portfolios in light of the objectives and requirements of the individual portfolios. The Trust Investment Committee reviews and monitors portfolio performance results and adherence to general policy.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

For broad usage in the Trust Department a market capitalization of \$75 million is required. We hold equities of much smaller companies in two situations:

1. In a commingled fund designed specifically for this purpose.

2. When contributed by a customer or when directed to purchase by a customer.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

No, we believe as a general rule that market capitalization is a more meaningful measure of liquidity than trading volume, although the latter cannot be totally ignored.

25. What is the average size of cash balances of the funds under your management?

\$27.7 Million (0.86% of total assets managed)

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Yes.

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RESPONSE OF THE BANK OF AMERICA, JOSEPH SCHMEDDING, SENIOR VICE  
PRESIDENT

SUBCOMMITTEE ON FINANCIAL MARKETS OF THE COMMITTEE ON FINANCE,  
U.S. SENATE

1. What is the total dollar amount of your assets under investment management?

Approximately \$6 billion.

2. What is the dollar amount of your assets under management over which you exercise complete investment discretion?

Approximately \$3 billion.

3. What is the total dollar amount of your employee benefits plans under management?

Approximately \$1.2 billion.

4. What is the average annual inflow of employee benefit funds into your management?

Approximately \$100 million.

5. What is the total dollar amount of the employee benefit funds under your management over which you exercise complete investment discretion?

Approximately \$1 billion.

6. What percentage of the employee benefit funds under your management are invested in common stock?

Approximately 50 percent.

7. Do you have more than 5 percent of your aggregate discretionary funds invested in one security? If so, in how many instances does this occur and what percentage does the security (or securities) represent? Please list such securities.

No.

8. Are there any instances in which the aggregate discretionary holdings amount to more than 5 percent of the shares of the security outstanding? If so, what are the names of the companies held and what percentage of the shares outstanding do your discretionary accounts represent?

Yes. Amfac, Inc., 5.7 percent; Jonathan Logan, Inc., 5.4 percent.

9. Does your trust department have some self-imposed limit on how much of aggregate discretionary accounts will be allowed in one security in order to insure liquidity for the individual accounts? If so, what is it?

Approximately 7 percent, subject to other considerations.

10. Do you have a personal opinion as to what would be a prudent percentage of aggregate discretionary funds in one stock: 2 percent, 5 percent, 10 percent, 15 percent?

No; the "prudent percentage" depends upon the capitalization of company and marketability of stock.

11. Does your department have some self-imposed limit on how much of the assets of one portfolio should be invested in one security?

No; dependent on portfolio objectives and other constraints.

12. What is your personal opinion about a prudent limit for portfolio assets in one company?

Dependent on capitalization of company liquidity of market, and probable future cash requirements of the portfolio.

13. Does your trust department have some self-imposed limitation on the percentage of a company's outstanding shares that the department's aggregate discretionary holdings will represent in order to insure liquidity for the individual accounts?

Seven percent, but subject to other investment considerations.

14. Do you have a personal opinion as to what would be a prudent percentage of the outstanding shares of a company to hold: 2 percent, 5 percent, 10 percent, 15 percent, 25 percent, 50 percent?

Not over 10 percent, but limit would depend on capitalization of company and liquidity of market.

15. Do you believe it is desirable for a trust department's aggregate holdings to represent a sufficiently large percentage of outstanding shares to enable it to effectively control the company if it chose to do so?

No.

16. Can many widely held companies be effectively controlled with much less than a 50 percent position?

Yes.

17. In terms of concentration of economic power, would you see any danger in bank trust departments holding and voting controlling interests in many non-financial companies? What about several companies within the same industry?

No.

18. What percentage of the shares in your discretionary investment accounts do you hold voting rights and who decides how they are to be voted?

(a) Approximately 95 percent; (b) An authorized committee screens proxy materials and makes routine decisions. Nonroutine items are referred to Trust Investment Policy Committee with recommendations.

19. If institutions are going to be allowed substantial positions in companies, shouldn't the shares be voted by either the beneficial owners or at least your corporate or union client? If not, why not?

No. (a) Impossible to poll beneficial owners (e.g., thousands of hourly employees of major corporations and utilities); (b) Corporate or union customers have relinquished all beneficial interests in the investments, therefore should not have voting power.

20. Do your investment officers meet with the management of companies held by the trust department or of those which are being considered for purchase?

Yes.

21. Are you concerned about the antitrust question of owning large positions in two companies in the same industry and then discussing new product lines with them?

No. However, portfolio managers and other trust personnel are aware of the antitrust laws and regulations applicable to their functions.

22. Are your investment decisions for discretionary accounts governed by an investment committee? Please briefly describe the decisionmaking structure.

Investment decisions are made by senior officers assigned the responsibility for portfolio management. Decisions are reviewed by Review Committee of senior officers of Trust Department to insure that the decisions are consistent with investment policies, which are determined by the Trust Investment Policy Committee, a group of senior Trust Department and other Bank officers appointed by the Board of Directors.

23. Is there a minimum capitalization which a company must have before it is a practical investment for your trust department? If so, what is that capitalization?

No minimum capitalization has been established, but selection criteria require securities to have sufficient marketability characteristics as determined by consideration of listing, total market value of securities outstanding, total number of shares outstanding, estimated float, trading activity at various intervals of time and institutional ownership and acceptance to enable the expeditious accumulation and distribution through normal trading activity of a departmental position of at least \$1 million.

24. Is there a minimum amount of average weekly trading volume in a company's securities necessary to make it a practical investment for your trust department? If so, what is that trading volume?

See 23.

25. What is the average size of aggregate cash balances of the funds under your management?

Twenty million dollars.

26. Are cash balances from your trust department deposited on the commercial side of your bank?

Some are; some are not. Cash balances are placed where they will earn the best yield consistent with safety and availability when needed.



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