

## Marketing Opportunities

1. The Uniform Prudent Investor Act and the Uniform Principal and Income Act raise the bar for trustee performance. Trustees cannot sit tight on a conservative portfolio and still comply with the new investment standard. Also, the Uniform Principal and Income Act anticipates that trustees will be much more active, exercising much more discretion, in balancing the rights of the income beneficiaries and remainder beneficiaries. Now may be the time for the trustees of existing trusts – or for settlors and testators considering establishing new trusts – to opt for a corporate trustee (or a corporate co-trustee, or a bank or trust company as agent for an individual trustee).
2. Individual trustees wishing to delegate investment decisions *may* be able to avoid liability for the actions of the agent if the agent does not require arbitration or a shortened statute of limitations in the delegation agreement. Most brokerage firms seem unwilling to remove arbitration provisions and shortened statutes of limitations from their contracts. Banks and trust companies who are willing to do so have a competitive advantage in acting as investment agent for an individual trustee. Banks and trust companies in this position need to make lawyers representing individual trustees aware of this fact, which might tip the scale in the bank/trust company's favor.
3. Trustees who also are beneficiaries cannot exercise the power to make adjustments between principal and income in Section 116.005. Settlers may wish to name a corporate trustee (or a corporate co-trustee, or a corporate trustee as an alternate) so that the power to adjust may be taken advantage of.