Oklahoma City
Community Foundation

the adviser

a newsletter for legal and financial advisers
December 2001

Oklahoma City Community Foundation's Investment Committee Diversifies Equity Portfolio

www.occf.org

Investment management at the Community Foundation has been an important topic in recent months, but not because of the downturn in the stock market. Led by investment counsel, James K. Hotchkiss and Investment Committee Chairman James H. Holloman, Jr., the Community Foundation Investment Committee has implemented a strategy of diversifying the equity portfolio on the basis of both value and growth styles as well as the capitalization of the individual stocks.

Jim Holloman, Investment Committee chair, addresses a group interested in the changes being made in the Community Foundation's investment policies.

The Community Foundation's general investment pool, a $156 million aggregation of more than 500 individual funds, currently has seven equity (stock) managers and one fixed-income manager. BankOne manages the fixed income investments. The Investment Committee has allocated 65 percent of the assets in the pooled fund to equity investments. The managers and their respective styles include:

- Bank of Oklahoma
  - Large Capitalization Growth
- Tom Johnson Investments
  - Large Capitalization Value
- Wedge Capital
  - Large Capitalization Value
- Kalmar Investments
  - Small Capitalization Value
- Columbus Circle
  - Mid-to-Small Capitalization Growth
- Louie Navellier
  - Mid-to-Small Capitalization Growth
- Barclays
  - Russell 1000 Index Fund (Core Style)

While the investment return for the fiscal year ending June 30, 2001, and the quarter ending September 30, 2001, were both negative, the Community Foundation's investment performance for both time periods was better than the market averages. Jim Holloman attributed the better than expected performance ...continued on page 5

Oklahoma City Community Foundation, Inc.

Combined Statement of Activities- Unaudited

	Three Months Ended September 30, 2001	Year Ended June 30, 2001
REVENUE AND SUPPORT		
Contributions	$ 489,191	$ 62,423,801
Investment income	2,769,546	12,678,670
Net investment Gains/(Losses)	(33,317,777)	(26,348,960)
Change in value of split-interest agreements	-	(45,411)
Other income	855	35,057
TOTAL REVENUE AND SUPPORT	(30,058,185)	48,743,157
EXPENSES AND DISTRIBUTIONS		
Grants and program services	3,505,593	30,855,478
Investment management fees	289,706	1,088,111
Charitable remainder trusts & annuities payments	12,649	-
General and administrative	251,523	1,034,604
Development	100,750	415,097
TOTAL EXPENSES AND DISTRIBUTIONS	4,160,221	33,393,290
INCREASE/(DECREASE) IN NET ASSETS	(34,218,406)	15,349,867
NET ASSETS AT BEGINNING OF PERIOD	395,710,162	380,360,295
NET ASSETS AT END OF PERIOD	$361,491,756	$395,710,162

Statement of Financial Accounting Standards No. 136 is not applied to the financial statements on an interim basis. For purposes of comparability, the year end numbers are also stated without those adjustments.

Oklahoma City Community Foundation, Inc.

Investment Performance
Pooled Investments

Percentage Returns

	Three Months Ended September 30, 2001	Year Ended June 30, 2001	Three Years Ended June 30, 2001	Five Years Ended June 30, 2001
EQUITIES				
Community Foundation	-14.02	-14.45	4.38	13.94
Standard & Poor's 500	- 14.68	-14.83	3.89	14.49
FIXED INCOME				
Community Foundation	4.91	10.89	6.40	7.07
Lehman Int. Gov. Credit	4.60	11.04	6.42	7.02
TOTAL FUND				
Community Foundation	- 7.16	-5.65	5.39	10.97
65% S&P/35% Lehman	- 7.93	-5.78	5.16	--

Results given are for all Community Foundation Funds excluding those in separately invested supporting organizations. Special assets are also excluded. Equity performance is compared to the Standard and Poor's 500 Stock Index; fixed income performance is compared to the Lehman Intermediate Government Credit Bond Index; total return is compared to a composite of these two indices, with weighting based upon applicable asset allocation.

Special Needs Trusts

by Lee M. Holmes, Attorney, CELA

LEE HOLMES, ELDER LAW ATTORNEY, HAS DEDICATED HIS LAW PRACTICE TO ASSISTING PEOPLE FOR QUALIFICATION FOR MEDICAID FOR NURSING HOME CARE, OR FOR AT-HOME CARE AND PRESCRIPTIONS, AND TO ASSISTING PEOPLE WITH ESTATE PLANNING FOR DISABLED BENEFICIARIES WHO MAY BE ON SOME TYPE OF GOVERNMENT ASSISTANCE OR MAY SOME DAY NEED SUCH ASSISTANCE.

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Phone: 405/235-5603.

Special Needs Trusts (SNT), also sometimes called Supplemental Needs Trusts, are Trusts which hold, manage, and distribute assets and income under Trust provisions which prevent disabled beneficiaries from being ineligible for government benefits. SNTs can be Testamentary Trusts (a trust established under a Last Will and Testament) or Intervivos Trusts (a trust established during life). SNTs have special provisions which can prevent the assets and/or the income of the Trust from being counted as a resource (asset) or income to the beneficiary.

There are many types of SNTs under different federal laws or state laws. The type of SNT which someone may need depends various factors such as age, amount of resources, whether the Trust is for themselves or a disabled beneficiary, etc.

Why Would You Need a Special Needs Trust?

Special Needs Trusts are used so a disabled or a potentially disabled person can obtain or preserve the benefits of SSI (Supplemental Security Income) or Medicaid or other asset or income based programs. Government programs such as SSI and Medicaid are means tested programs. To be eligible, the applicant for benefits must have limited countable assets and/or income. For example, for SSI or Medicaid, the applicant must have less than $2,000 of countable assets (sometimes called resources).

Countable assets vs. exempt assets: Many assets owned or available to the applicant are not countable assets. Those assets are "exempt assets." Examples of exempt assets are personal effects, clothing, personal jewelry, household furniture and furnishings, a prepaid irrevocable burial policy (maximum of $7,500), burial lots, one vehicle (with exceptions and sometimes equity value is limited to $4,500). A home may also be exempt.

All other assets are countable resources. Examples of countable resources are bank accounts, stocks, bonds, rental real estate, annuities and extra vehicles. Of course, there are always exceptions.

When Should There Be a Special Needs Trust?

A Special Needs Trust should be drafted for all known disabled beneficiaries, even those not presently utilizing government programs. For example, if a person has a disabled child or grandchild, they should provide in their Will or Living Trust for a SNT for the disabled child or grandchild. Even if the disabled child or grandchild is not currently eligible for a government benefit, they may become eligible in the future.

A person cannot create his own SNT. However, under some limited situations, a disabled person may put his assets in a SNT of which he is the primary beneficiary so that he will stay qualified or to get qualified.

Should a parent just disinherit a disabled child or grandchild? Usually no. Simple but not wise. The disabled child may need more financial assistance than the well child. Leaving all the assets to the well child who "I know will take care of my disabled child" is short sighted. The well child may become disabled or die leaving the assets to someone who does not have the same concern for the disabled child.

Who Should Plan To Have a Special Needs Trust?

That depends on the situation. Examples: A parent with a disabled child should nearly always provide for the disabled child with a SNT. A spouse with *...continued on page 4*

a disabled spouse can establish a Testamentary Special Needs Trust so the disabled spouse can be eligible for Medicaid to pay nursing home expenses or to qualify for the ADvantage Waiver program for in-home help and prescriptions. A disabled parent who wants to qualify for Medicaid benefits to pay for prescriptions or nursing home care may be able to transfer the assets to a Special Needs Trust for a disabled child and the transfer will not cause a transfer penalty for the parent's Medicaid eligibility. The various possibilities are too numerous to list. The general rule would be that if there is a person who is disabled and on government assistance or who may some day qualify for government assistance, then an attorney experienced in SNTs should be consulted.

How Does a Special Needs Trust Work?

A Special Needs Trust should provide:

Intent: It is the intent of the Grantor that assets and income not be deemed available to the disabled beneficiary. It is the intent of the Grantor to supplement government benefits, not to replace government benefits.

Discretionary distributions: The Trustee has complete, unfettered discretion to NOT make distributions to the disabled beneficiary. The Trustee has authority to provide benefits which otherwise are not available from government benefits.

Fortunately in Oklahoma, the Trustee may make disqualifying distributions, when appropriate, in the sole discretion of the Trustee. So in Oklahoma, a Special Needs Trust may be a "trigger trust" - one which at times may make disqualifying distributions and at other times limits distributions to special needs.

Why is this important? The beneficiary may not currently need government benefits, but needs distributions for health, maintenance and support.

Who Handles A Special Needs Trust?

A Trustee(s) manages the funds and assets in a SNT and makes distributions. Generally the disabled beneficiary should not be a Co-Trustee, although the disabled beneficiary may be a Co-Trustee if they do not have power to vote on distributions. Corporate Trustees are good at managing funds and are becoming knowledgeable about Special Needs Trusts, Medicaid and SSI programs. Individuals as Trustees must be given special instructions and advice relating to many matters, especially distributions to or for the beneficiaries.

May the Trustees of a Special Needs Trust Make Disqualifying Distributions?

Yes. Depending on how the document is drafted, the Trustees should have the option of making distributions to or for the beneficiary which cause ineligibility for Medicaid or other government benefits. Nearly all Trusts in Oklahoma (present law and interpretation) should have this option. Even self-settled (d)(4)(A) Trusts in Oklahoma may have this option. This option is not appropriate in other states, e.g. Colorado. Therefore, the attorney drafting the trust should be experienced in SNTs and their application in Oklahoma.

Can a Disabled Person, Already on Medicaid, Who Receives an Inheritance Stay Qualified?

It depends. If the disabled person is under age sixty-five (65), then the inheritance can be transferred by the disabled person to a SNT specially created by a parent, grandparent, court or guardian. This Trust is allowed under 42 USCA 1396 p (d)(4)(A) (sometimes called a (d)(4)(A) Trust or a "payback Trust"). At the death of the beneficiary, any assets remaining in the Trust must first be used to pay back Medicaid for costs paid for the beneficiary.

Disclaimer: The above is a very short summary of some of the aspects of SNTs. It does not constitute legal advice. If you feel that you need a Special Needs Trust, you should consult with experienced legal counsel.

Helpful Non-profit Web Sites

For information about how to start a non-profit organization or the operation and management of a non-profit, check out the following sites:
http://www.nonprofits.org
http://www.mncn.org

For information about specific non-profit organizations and foundations, including copies of IRS Form 990, check out the following sites:
http://www.guidestar.org
http://www.grantsmart.org
http://www.fdncenter.org
http://www.cof.org

For information about non-profit organizations in Oklahoma City, check out the following site:
http://www.occf.org/occf/charities/index.html

For information about planned giving and other tax and estate planning issues, check out the following site:
http://occf.org/occf/financial-planner/pgdc.htm

Oklahoma City In the Spotlight: A Model for Dealing with September 11 Terrorism Tragedy

The September 11 tragedies in New York and Washington, D.C., have put Oklahoma City in the national spotlight again, this time as the only real model for dealing with the tragedy caused by terrorism. The experience of the charities in Oklahoma City following the April 1995 bombing of the Murrah Federal Building have become an example for the larger communities and the organizational efforts have been cited by political leaders, national media, as well as national charitable organizations.

In 1995, approximately $40 million was received in Oklahoma City by the American Red Cross, the Salvation Army, the United Way, the Community Foundation on behalf of the Mayor of Oklahoma City and the Governor of Oklahoma, various church social services agencies and a number of independent funds. More than 3,000 individuals and families have received assistance from these organizations and funds over the past six years. The cooperative efforts of the charities in dealing with both the funds and the services needed by the survivors has been the object of national interest.

Smart Money, the monthly news magazine of the Wall Street Journal, featured Oklahoma City and its long-term approach to assistance compared to the efforts at Columbine in Denver and the current efforts in New York. The article appeared in the December edition.

The New York Times' annual supplement, "Giving," focused on lessons learned from Oklahoma City which might be applicable to New York City. Editorials in the paper have urged charities in New York to model their data sharing efforts on the system used in Oklahoma City.

Nancy Anthony, Executive Director of the Community Foundation.

Chronicle of Philanthropy's Nov. 29 edition included interviews with three Oklahoma City organizations and the impact the 1995 bombing had on both the organizations as well as the staff who provided services.

Nancy Anthony, Executive Director of the Community Foundation and one of the primary organizers of the charitable efforts in Oklahoma City commented, "As difficult and stressful as that time was, it is gratifying to know that we can share our experience and help other cities understand what a long-term task they are undertaking."

Investment Committee

...continued from page 1

to the diversification effort. "Over the long-term, each style will do well at different times. We need to make sure that we monitor our allocations and rebalance to achieve the opportunity for good returns."

The Community Foundation Investment Committee meets quarterly with Mr. Hotchkiss to review the performance of each manager and to consider the allocation of assets to specific styles. He pointed out that the equity market is "...more likely to revert to historic form of 8 to 10 percent returns," and the bond market perhaps to a 5 percent average return.

For more information about investment policy and performance, see our Web site, **www.occf.org** or contact the Oklahoma City Community Foundation office.

Year End Tax Planning Opportunities

Donor-advised funds at the Oklahoma City Community Foundation are an excellent alternative for donors to achieve a year-end charitable tax-deduction. A gift of appreciated stock or other assets can be made to a donor-advised fund before year-end and the donor will receive the maximum deduction for the gift during the year 2001. The donor can later advise the Community Foundation on how to direct the gift. Several charities can benefit from one stock gift.

For more information about different types of donor-advised funds, contact Penny Voss or Donna McCampbell at the Community Foundation, 1300 N. Broadway Drive, Oklahoma City, 73103. Or call **405/235-5603**, or visit the Web site, **www.occf.org** and click on "Services for Donors."

Mission Statement

The mission of the Oklahoma City Community Foundation, a non-profit public charity, is to serve the charitable needs of the Oklahoma City area through the development and administration of endowment funds with the goal of preserving capital and enhancing its value for the benefit of the Oklahoma City area.

The mission will be fulfilled by seeking to:

- Provide convenient, efficient, and effective ways through which donors can contribute assets to charitable purposes.
- Encourage donors to create funds which will benefit the community both now and in the future.
- Advocate for the development of endowment funds and provide appropriate means by which permanent endowment funds can be built and wisely managed to provide long-term support.
- Develop the Funds for Oklahoma City, restricted and unrestricted community endowments, which can be used by the Trustees and the community to develop, coordinate, and enhance services and programs which meet the changing needs of the community.

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IRS Clarifies Tax Treatment of Leave-Based Donations

Employees who donate the value of unused paid leave to charity in 2001 or 2002 won't have to pay income taxes on the money, the Internal Revenue Service recently said. Many employers and employees are looking for ways to contribute efforts to recover from the tragedies of September 11.

With notices 2001-64 and 2001-69, the Treasury and IRS have clarified tax treatment of leave-based donation programs. According to the notices, employees can forgo their vacation, sick or personal leave in exchange for their employer contributing the value of that time to charity. Employees donating will not have to recognize income for the amount of leave donated to charity. Likewise, employees will receive no income tax deduction for the amount of leave donated.

The notices clarify the assignment of income and constructive receipt doctrines for leave-based donation programs. The guidance provides flexibility for employers and employees to participate in leave-based donation programs knowing the tax consequences of the programs.

The Service and Treasury Department invite comments on the taxation of leave-based donation programs. Comments may be submitted on or before February 1, 2002 to **notice.comments@m1.irscounsel.treas.gov**

For more information about leave-based donation programs, visit the Planned Giving Design Center on the Oklahoma City Community Foundation's web site, **www.occf.org.** To receive free electronic updates on IRS developments, register with the Community Foundation's Planned Giving Design Center at **http://occf.org/occf/financial-planner/pgdc.html**

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