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Economic Commentary

There have been quite a few economic data releases since we last reported to you, and thus, the pulse reading of the economy seems a bit fresher. The Federal Reserve publishes its “Beige Book” eight times per year. The latest summary was released May 30 and includes not only economic data, but also, anecdotal comments from each of the twelve Federal Reserve district banks. Highlighting the May 30 release were the following comments. “Economic activity expanded moderately in April and May with few shifts in the pattern of growth.” Manufacturing “shifted into higher gear with more than half of the districts reporting a pickup in industrial activity and a third of the districts reporting strong activity.” To contrast the industrial output, “consumer spending softened.” Auto sales were “flat” in the period, and non-auto sales moderated from the previous “strong” report. Labor conditions were reported as “tight” in all districts, while wage increases were deemed “modest” across the twelve reporting Fed districts. There was an abundance of anecdotal comments reinforcing that the trends in place for recruitment and retention were one-time sign-on and anniversary bonuses that don’t fall to wage rate increases, but yet are a part of total labor costs. In essence, what is not necessarily evident as wage growth is being felt by employers in total labor costs.

Contrarian thought is often present in economics and financial markets. Sometimes good news is met with market drops and pessimism when on the surface it is exactly what we were hoping to see. The May employment report was stronger than April and in excess of what was expected, though monthly aberrations are not unusual. At the current level of available labor, as well as labor participation rate of the general population, we must generate about 100,000 jobs per month to keep unemployment steady. The report for May indicates 233,000 jobs were created and the corresponding unemployment rate fell to 3.8%. Most economists have assumed “full” employment to be 4.5%, and thus, many have difficulty in assessing whether we are at the bottom in unemployment rate, and therefore, also at the top in the economic cycle. A view of historical expansions would suggest that unemployment rates of 3.8%, and 7.6% for U-6, fall very near the bottom. The question unanswered in the current context is how much lower can it go? And how long can the current

Commentary, continued

“Attempting to put globalization back in the proverbial bottle is a fool’s errand and will cause more pain than progress.”

condition be sustained?

Sign-on bonuses, as well as retention lump sum anniversary payments, can aid employers in certain labor scarce markets for a while; however, when the slack in labor supply vanishes, wage rate wage increases will provide the Fed with a dilemma, having scheduled three rate hikes in 2018 already. We observed somewhat similar conditions in the 1990s that transformed the labor market when sustained low unemployment led to increased labor training and development, and therefore, skill and productivity advancement. As we have mentioned before, productivity growth (more output per unit of labor) is key to sustained economic growth. We will keep a watchful eye on the conditions necessary to measure tangible investment in productivity by business sectors.

Business fixed investments (those necessary to increase productivity) rose to 9.2% vs. 6.1%, the strength of which was in intellectual property (software), energy and physical plant. It is not hard to remember the dearth of investment in these areas as we were coming out of the recession of 2008. The reasons for the absence of business investment were understood as many business owners were simply trying to keep the doors open. After 30 quarters of incremental growth, perhaps more companies are now able to look further into the future and invest in the productivity tools necessary to remain competitive and grow.

The President allowed steel and aluminum tariff exemptions for Canada, Mexico and the European Union to lapse, increasing the rhetoric of retaliatory tariffs by those trading partners.

The rhetoric from the White House changes regularly, and varies in verbosity and conviction on an almost daily basis. Analysts can quantify a tariff’s impact if they can count upon the actual tariff. The problem surfaces when they cannot count upon the permanence of the action. As we have discussed previously, tariffs are dynamic — they are almost never static. In general, most markets in most, if not all, mature economies, look for more, not fewer customers. Tariffs impact end price, as does currency valuation. If a country (i.e. China) artificially keeps their currency from fluctuating, they can make their exported products cheaper. If they simultaneously place tariffs on imported goods and services, they can make it more costly and less competitive to do business in China, thereby creating a “one way street” with respect to trade. It is the responsibility of taxing authorities (governments) to make certain that there is a “fair” trading environment amongst trading partners so that multinational trade expands the GDP of all trading partners, increases commerce, reduces unemployment and creates more customers. Active trade negotiation is always a part of international commerce. Trading environments are best when business and industry can count on the environment in which they compete. Drastic change in policy punishes rather than advantages commerce. Companies that export require creativity, engineering, investment, technology, manufacturing, sales, logistics and policy adherence. None of the

above is advanced by significant change enacted with great velocity. Certainly, it is great to benefit from a tariff that punishes your competition; however, it seems to make a great deal more sense to have trading policy that is fair to all and enhances your ability to be rewarded for the efforts necessary to do commerce globally. Attempting to put globalization back in the proverbial bottle is a fool's errand and will cause more pain than progress. What is needed is consistent trade policy that is fair to all and is consistently enforced and monitored. Tweets might be entertaining for some, but in the end, it is the tough, hard work of trade negotiation enhanced with significant input by those that go to work each day trying to grow their companies, and therefore, grow opportunities for GDP expansion, technological enhancements, productivity growth, job and wage increases. ☑

The Evolution of Written Wills

The law that deals with the execution of a valid will is not particularly complicated. The law goes back to 1549 with Great Britain's adoption of the Statute of Wills, which was later supplemented in 1766 with its Statute of Frauds that required that a will that transfers real estate to be signed by the individual in the presence of three or four credible witnesses. Michigan's laws, and most state laws with regard to the execution of a valid will, go back to an 1837 statute which requires that a will to be admitted to probate it must be in writing, signed by the individual at its end, and be signed by the individual in the presence of two witnesses who must then each sign in the individual's presence.

The formalities required for the execution of a valid will are intended to serve three separate functions. First, the requirement that the will be in

writing and signed in the presence of disinterested witnesses is intended to protect against fraud — a *protective function*. Second, the requirement that the will must be in writing is intended to establish a permanent record for use in a later probate — an *evidentiary function*. Third, the prescribed formality that surrounds an individual's signing of a will is intended to impress on that individual that it is a serious final act, inasmuch as his or her estate accumulated over their entire lifetime will be conveyed by this single instrument — the *cautionary function*.

These execution formalities are all imbedded in the Michigan Estates and Protected Individual's Code. Despite the underlying functions for a signed will to be valid, the law seems to be moving away from these historic formalities. For example, a writing that is intended to be treated



George F. Bearup
Senior Trust Advisor

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Wills, continued

“Adding to this growing looseness with regard to formalities usually followed to execute a valid will is the fact that many states will soon be considering legislation that would authorize an electronic will and electronic signatures...”

as a will, even if it is not executed in compliance with the prescribed formalities, may still be admitted as the decedent’s will if there is clear and convincing evidence that the decedent intended the document to be his or her will, or an amendment (codicil) to that will. And a will that does not comply with the statute’s formalities, whether or not it is witnessed, may still be treated as a valid *holographic* will if the document is dated and the signature and the will’s material portions are all in the individual’s own handwriting.

This loosening of will execution formalities has provided some interesting probate litigation in Michigan in recent years. A few examples follow:

- A prenuptial agreement was offered, but rejected, as a valid holographic will of one of the parties to that agreement - *In re Estate of Waller, 2015*;
- A handwritten suicide note that was dated, signed, and which reflected the individual’s testamentary intent, qualified as a valid holographic will by the decedent - *In re Marion R. Craig Trust, 2013*;
- An unsigned final draft of a will that was prepared by the individual’s attorney was nonetheless admitted to probate as the individual’s final will - *In re Estate of Attia, 2016*;
- An undelivered deed found in a desk drawer was determined to be an amendment to the individual’s will that directed a transfer real estate to the grantee who was named in

the deed - *In re Southworth, 2011*;

- Letters the individual wrote that mentioned a desired distribution of property, but only because they were not signed by the individual, were rejected as a holographic will - *In re Smoke, 2007*; and
- A trust amendment was found by a court to express a clear intent to revoke that individual’s separate will so the signed will was not admitted to probate - *In re Gentile Trust, 2010*.

What many of these reported cases from Michigan courts tell us is that written documents that do not even use the word ‘will’ or ‘last will and testament’ may still be treated as a will under Michigan probate laws, or be used to revoke prior valid wills. When even a suicide note can qualify as a will depending on its final wording, or a signed deed discovered in a desk drawer after the individual’s death may be viewed as a will, the customary rules that deal with wills are no longer all that relevant.

All of which suggest that when writing out thoughts as to how one might wish to leave their estate, those informal writings should be destroyed once a final will is signed in order to avoid any confusion that there may be a more current ‘will’ that implicitly revokes the prior signed will, or that they were intended to supplement or amend an existing will. Implicit in each of the cases noted is the legal expense and attorneys’ fees incurred by the individual’s estate in the dispute over what is, and what is not, a valid and binding will to be offered

to the probate court.

Adding to this growing looseness with regard to formalities usually followed to execute a valid will is the fact that many states will soon be considering legislation that would authorize an electronic will and electronic signatures to those digital wills. By way of a brief bit of history, Congress enacted a statute that authorizes electronic signatures that are used in global commerce: The Electronic Signatures in Global and National Commerce Act. Similarly, many states have adopted the Uniform Electronic Transactions Act which authorizes electronic records and electronic signatures to be used in business transactions. But neither the federal statute nor the Uniform Act applies to the creation of a will, codicil, or a trust. The accompanying legislative history to the federal statute notes: *“However, the personal nature of the information disclosed in these documents [a will] and the relative privacy interests of the donor and beneficiaries may raise issues that do not arise in legal proceeding involving commercial or other civil matters.”* [Federal Register, Vol. 67, No 198, Oct. 11, 2002.] The reality is that a will is not a ‘commercial transaction’ between parties but a critically important legal document that disposes of an individual’s lifetime accumulation of wealth to his or her intended beneficiaries and for which there are multiple interested parties in a probate proceeding. In light of the three *formality functions* that historically support the reliability

of a will signed by an individual in the presence of two independent witnesses, is it a good idea to permit electronic wills, with electronic signatures, stored somewhere in the *cloud*?

Nevada and Indiana have adopted such statutes. Nevada’s electronic will statute goes back to 2001. Critical elements of Nevada’s statute include that the subscribing witnesses do not need to be in the individual’s presence when the will is executed- they can even be in different physical locations away from each other and from the signing individual, possibly even in a different state. But so long as the two witnesses are able to see, hear and communicate with the individual who signs the will through audio-video communication devices, they can attest to the individual’s independence, and mental and testamentary capacity. The Nevada statute also contains provisions where a ‘qualified custodian’ can store the electronic will. But how will the beneficiaries named in the electronic will even know that a will exists if there is no copy in the decedent’s home, no copy held for safe-keeping by an attorney, trust company, nor is it registered with the probate court? Moreover, there is no indication in Nevada’s statute where, in the *cloud*, the will can be accessed by a personal representative when the will needs to be offered for probate.

The questions raised by the authorization of electronic wills, witnessed by persons not in the presence of the signing individual, who are yet required to assess the

individual’s mental capacity to sign his or her will, (or to look for signs of undue influence or duress over the individual) which is stored somewhere in the *cloud* by a ‘qualified electronic custodian’ are only now just being explored. This may be a problem that is not just limited to Nevada and Indiana. The Uniform Law Commission, the source for Michigan probate and trust codes, recently formed a committee to study the creation of a uniform law that authorizes electronic wills to be adopted by each state.

The law of wills is obviously evolving. If a deed and suicide note can be treated as valid wills that are admitted to probate, it is hard to know where to draw the line. Permitting electronic wills, signed electronically, then electronically witnessed by out-of-state individuals, then stored (somewhere) in the *cloud*, may cause even more expense and damage to probate’s already sullied reputation. A will should acknowledge in its title that it is intended to be a will. It should be signed by the individual who uses blue ink on paper. That signature should then be witnessed by two independent witnesses who sit in the same room when the will was signed, who then sign the will attesting to the individual’s competency and independence to sign the instrument. I guess I am just too old fashioned to get excited about electronic wills but don’t be surprised to find them in Michigan in the next few years. ☐



Natasha L. Tamminga
Participant Services Administrator

Longevity & Retirement Planning — The 73/47 Rule

When planning for retirement, the number that is often focused on, especially by our young savers, is the age or year that they want to retire. We hear them say, “I have dreams of spending years traveling and adventuring while I’m still young enough to enjoy it!” However, many people fail to really think about how many years they’ll need to live off their savings once they do retire. During a recent meeting, a young participant stated he wanted to retire in 25 years at age 50 and asked what he would need to do to make that happen. We ran some calculations to show an estimation of what he would need to live comfortably through retirement and he was astounded by the amount of money he would need to save over the next 25 years. “That’s much more than the average I just read in an article,” he said. We pointed out that most general articles were going to use the standard retirement age of 65 when making their calculations. If he intended to retire at 50, he would not only need to have more income saved to be able to spend 15 additional years in retirement, but he would have 15 fewer years to contribute to his current investment plan, while taking advantage of the company match and compounding advantage prior to reaching his early retirement age.

A focus on ensuring that long term savings will last throughout retirement years is something many young savers have not considered, but with today’s ever increasing longevity statistics, it’s a very important detail that needs to be taken into account. A new phrase has recently gained popularity when illustrating the importance of understanding longevity – the “73/47 Rule.” This rule states that “for a husband and wife age 65 today, there is a 73% chance that one will be alive at age 90, and a 47% chance that one will be alive at age 95.” Going even further, this person has a 20% chance of living to be over the age of 100! These statistics illustrate that there is a good chance today’s retirees will need savings that last 25–30 years and possibly beyond, and that’s if they plan to work until age 65.

With this in mind, future retirees would be wise to plan for more years in retirement. Two common questions posed by those saving for retirement are, “Do I have enough saved?” and “Will what I’ve saved last a lifetime?” Not being realistic about just how long that lifetime could be is a costly mistake. It is of vital importance that everyone saving for retirement have a plan. To really last a lifetime, today’s retirement income plans should be about more than simply saving. Encouraging future retirees to seek the help of a retirement professional to ensure they are using all possible resources, while saving as much as they can, can be a great advantage when preparing for a lengthy retirement. Investment knowledge and guidance are the tools that will help

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them make informed decisions on post-retirement health care costs and coverage, additional insurance coverage for financing long-term care needs, when to take Social Security, as well as how to manage inflation and market risk over the course of their retirement. Retiring with confidence and dignity is what we strive to assist our retirement plan participants in achieving, and having a candid conversation about their retirement goals during the planning process is the first step to getting them there. ☑

“Retirement is like a long vacation in Las Vegas. The goal is to enjoy it the fullest, but not so fully that you run out of money.” – Jonathan Clements

“To really last a lifetime, today’s retirement income plans should be about more than simply saving.”

Special Needs Trusts – Types and Tax Treatment

Special needs trusts can generally be divided into two broad categories: self-settled and third-party trusts.

If the funds to be placed in a trust once belonged to – or were under the actual or theoretical legal control of – the beneficiary, the trust is said to be “self-settled.” These trusts are often referred to as “payback” or “first party” trusts.

A self-settled special needs trust will usually comply with the requirements of 42 U.S.C. §1396p(d) (4)(A). Those requirements include, importantly, a provision directing that the trust’s assets will be available to pay back the state Medicaid agency upon the death of the primary beneficiary (but not Supplemental Security Income [SSI]). There are also limitations on who can establish the trust, and many state Medicaid agencies impose additional limitations on the use of the trust’s principal and income.’

When a special needs trust is established by someone other than the beneficiary, using funds that did not belong to (and were not already available to) the beneficiary, the trust is usually described as a “third-party” trust. A third-party trust will be subjected to far less scrutiny in most instances; a well-drafted third-party special needs trust will, however, have at least these basic characteristics:

1. Full discretion. The trustee of a third-party Special Needs Trust (SNT) should ordinarily be given complete discretion about distributions of either principal or income. Any mandatory distribution of income or principal will be treated as an available resource by the Social Security



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Special Needs Trusts, continued

“There is a lot of confusion among practitioners about the proper tax treatment of special needs trusts. There should not be...”

Administration and by most state Medicaid agencies.

2. No “support” or “maintenance” provisions. While not every state Medicaid agency will treat “support and maintenance” language as making trust assets available, many will – and the trend will run toward more frequent challenges to such language. Prudence dictates that even a direction to provide for the beneficiary’s “health” will be suspect in many cases. The trustee’s discretion should be complete and, if any limitation is needed, should run to the “comfort,” “special needs” or other similar qualifiers.
3. A well-drafted third-party special needs trust will have specific language directing the trustee to consider the beneficiary’s special needs, and perhaps include some language explaining what the settlor means by this provision. The goal: eliminate (or at least limit) the incentive for a Medicaid agency or Social Security Administration to challenge the availability of trust principal or income.

In considering language of support or maintenance, note the rationale behind the handful of challenges to such trusts. The question is not solely whether a trust beneficiary could compel a given distribution in a court – it may be only whether the state Medicaid agency could argue that the beneficiary might bring such an action. See, for instance, *Pack v. Osborn*, 117 OhioSt.3d 14 (2008), upholding the state’s eligibility rules, which require inclusion of a trust if the trustee is permitted to “expend principal, corpus, or assets of the trust for the applicant’s medical care, care, comfort, maintenance, health, welfare, general well-being or any combination of these purposes.” Note that on remand, the Ohio Court of Appeals held that the language of the trust at issue in *Pack v. Osborn* was a purely discretionary trust; it provided for payments “only for supplemental needs over and above those met by entitlement benefits.” *Pack v. Osborn*, 2008-Ohio-5956 (Ct App 2008).

There is a lot of confusion among practitioners about the proper tax treatment of special needs trusts. There should not be much confusion.

In every imaginable case, a self-settled special needs trust will be a grantor trust, since it is inconceivable that a trust will be drafted to preclude the trustee from making a distribution of more than 5% of the income or principle of the trust for the benefit of the grantor. IRC §673(c) will treat any trustee discretion as if fully exercised in making the calculation; as a consequence, every self-settled SNT will be a grantor trust.

Does a self-settled SNT need an Employer Identification Number (EIN)? No. 26 CFR §301.6109-1(a)(2)(i)(B) gives you two options:

1. Secure an EIN (but note that the trust will not file a substantive 1041 – see below), or
2. Use the grantor’s Social Security number.

In either case, the trustee is obligated to give the grantor the information necessary to complete her individual income tax return.

If the trust secures an EIN, what does its 1041 look like? 26 CFR §1.671-3(b)(2)(A) and (B) tells you that you must give the grantor sufficient information to complete her individual income tax return, and that you do not put income and expenditures on the 1041. In other words, you do not have the option of choosing to capture the income at the trust level, you do not get to elect to take deductions or exemptions at the trust level, and you do not get to “shelter” the appearance of income from the grantor/beneficiary.

What about third-party SNTs? They may be grantor trusts too, of course – to the original grantor.

Upon the grantor’s death, or upon relinquishment of sufficient control to cause the third-party SNT to be a separately taxable entity, the key questions will become whether the trust is complex or simple, and whether it can be characterized as a “Qualified Disability Trust.”

The difference? A complex trust is permitted to accumulate income, and a simple trust must distribute all income to (or for the benefit of) the beneficiary each year. More straightforward, complex trusts are entitled to a \$100 personal exemption, and simple trusts receive the more generous \$300 exemption. Most third-party non-grantor SNTs will be complex trusts.

But wait: if the trust is a Qualified Disability Trust under IRC §642(b)(2)(C)(ii), it will receive a \$4,000 (in 2015) personal exemption. What do you have to do to get that better treatment?

Virtually every third-party SNT will qualify, since the principal limitation is that all beneficiaries (but not remainder beneficiaries) must be “disabled” according to the Commissioner of Social Security. While there is, at least theoretically, a mechanism for determining disability outside of eligibility for SSI or SSD, eligibility for either of those benefits satisfies the requirement. In other words, virtually every third-party SNT will be a qualified disability trust by virtue of the SSI or SSD benefits received by the income beneficiary. 

“A complex trust is permitted to accumulate income, and a simple trust must distribute all income to (or for the benefit of) the beneficiary each year.”



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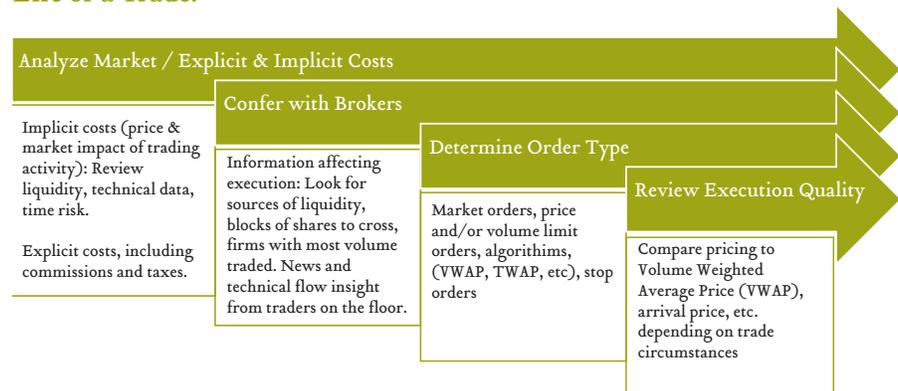
“A recent trip to New York provided the opportunity for our trading desk to connect directly with experts on the floor of the New York Stock Exchange...”

From Rose Street to Wall Street

Trade execution is an important part of our investment process at Greenleaf Trust. A good investment strategy can be foiled if implementing the trades is too costly. We strive to achieve “best execution” (providing the most advantageous order execution for our clients given the current market environment) by managing transaction risks, as well as the various elements of explicit and implicit transaction costs. With over \$12 billion in assets under advisement, we leverage our scale to invest in technology, to develop our own market intelligence, and to build relationships with institutional broker dealers to work toward our goal of best execution. A recent trip to New York provided the opportunity for our trading desk to connect directly with experts on the floor of the New York Stock Exchange (NYSE). Direct access to traders and other experts is essential to achieving our execution priorities. This article will describe a number of the tools we employ to achieve best execution, the importance of continued human involvement in trading, and also a few anecdotes from our recent visit to the NYSE.

Although the floor of the exchange is no longer reminiscent of the chaos you might envision - hundreds of shouting traders and order tickets flying through the air like confetti - a more organized bustle exists today. Member firms cross large blocks of shares, huddle around IPO books, and make markets in securities. Access to these traders helps provide our trading desk with the most current and relevant information to implement trade execution strategies. We implement the process below before sending a trade to the market.

Life of a Trade:



While standing on the floor of the exchange, our equity specialist sent a group of trades to the market from our trading desk in Kalamazoo. Witnessing those same trades coming through on the broker’s side of the terminal in New York, and subsequently being delegated out to market makers on the floor of

the exchange was a fascinating perspective. The importance of understanding not only our side of the trading process, but also the institutional broker's side, cannot be understated. Strong relationships with several firms enable more diverse insight as well as healthy competition, which keeps commissions low. Although I was not able to flag down "Mad Money" personality Jim Cramer for investment advice (or an autograph) as he strolled by us at the NYSE, speaking with market makers and traders provided more applicable insight to the mechanics of the exchange. These relationships help us to implement strategies that balance risk with the desire to execute at a given price or timeframe.

Our relationships with institutional brokers and dealers is not limited to those who operate at the New York Stock Exchange. We have also developed strong relationships with a number of institutional bond dealers, options desks, and over-the-counter traders, among other market specialists. Relationships with varied institutional bond dealers, we believe, results in substantially better pricing over normal retail trading, and provides better access to bond inventory and new issues. Building these relationships and spending time out in the field creates synergies that benefit our clients.

As true with most aspects of life, things do not always go according to plan and when the stakes involve large dollar amounts, error prevention is especially important. On the morning of my visit to the NYSE, the exchange initiated trading of securities listed on other exchanges, such as the Nasdaq, for the first time. This included companies such as Amazon, Google, and others whose stock prices are over \$1,000, or four digits in length. Promptly after the opening bell these securities were halted due to a "price scale issue." In a Y2K-esque scenario, the fact that these securities traded for more than \$1000 per share had seemingly been overlooked by programmers and the reporting computers could not handle the extra digit. It cannot be denied that technology has vastly reduced the chance of human error; in fact, Greenleaf Trust has made significant technological investments in Bloomberg terminals and other electronic trading tools to help provide best execution and error-free implementation. The NYSE glitch proves that a human's decision making skills are still invaluable for delivering on the promises of improving technology.

Strong relationships with our trading partners enable information sharing, which adds perspective and a human touch to the trading process, while comprehensive tools and trading systems enable efficient implementation and best execution for our clients. In concert with our research team and the client centric team members who serve clients directly, our trading desk is integral to ensuring the tailored solutions developed for our clients are implemented accurately and efficiently. We look forward to continuing to serve on your behalf. ☑

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Stock Market Pulse

Index	5/31/18	Total Return Since 12/31/2017	P/E Multiples	5/31/18
S&P 1500	628.02	2.27%	S&P 1500	21.0x
Dow Jones Industrials.....	24,415.84	-0.24%	Dow Jones Industrials.....	18.4x
NASDAQ.....	7,442.12	8.32%	NASDAQ.....	22.5x
S&P 500.....	2,705.27	2.02%	S&P 500.....	20.7x
S&P 400	1,946.43	3.05%	S&P 400	22.8x
S&P 600	1,007.54	8.15%	S&P 600	28.1x
NYSE Composite	12,527.14	-1.12%		
Dow Jones Utilities.....	695.21	-2.43%		
Barclays Aggregate Bond.....	106.46	-1.75%		

Key Rates

Fed Funds Rate	1.50% to 1.75%
Tbill 90 Days.....	1.86%
T Bond 30 Yr.....	3.03%
Prime Rate	4.75%

Current Valuations

Index	Aggregate	P/E	Div. Yield
S&P 1500	628.02	21.0x	1.93%
S&P 500.....	2,705.27	20.7x	1.98%
Dow Jones Industrials...	24,415.84	18.4x	2.29%
Dow Jones Utilities.....	695.21	NA	3.84%

Spread Between 30 Year Government Yields and Market Dividend Yields: 1.10%

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