GREENLEAF TRUST

Perspectives

A Greenleaf Trust Newsletter

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William D. Johnston
Chairman, Greenleaf Trust

Economic Commentary

The consensus expectation for the advance estimate of Q1 2019 GDP was 2.2%. When the headline number was released at 3.2%, many were pleasantly surprised, but mostly because they quit reading after the headline number was posted. The Bureau of Economic Analysis (BEA) data releases are interesting, but mostly for economists. Financial market professionals, institutional investors and individual investors rarely dig below the headlines printed in data releases. The underlying data that is revealed after the layers of the onion are peeled back is the accurate portrayal of the economy.

We really do not expect much variation in data points released each month. What we, along with everyone else who is trying to accurately gauge the health and condition of our economy, want to see are trends in place that reveal a future condition, good or bad. Most of those data points are centered around the consumer. Is the consumer employed, are wages growing, is the consumer spending or saving, is the consumer's dollar buying more or less relative to inflation? How confident is the consumer as a result of their employment, wage growth and their perception of their fellow consumers' financial health? Are personal wealth components like home values, savings and retirement accounts growing or shrinking? These things are important because the consumer drives at least 70% of our GDP.

Other measurements like manufacturing data, housing starts, housing permits, auto sales, small business confidence index, and utility consumption confirm what the consumer is doing, but are a result of and not a predictor of consumer activity. The peeled away layers of the economic data reveal a consistent theme. The consumer is employed, spending (at some cost to saving) and confident. There are no observable data points that suggest the trend currently in place is or will change in the next quarter. While we expect the revised estimate to change from the initial or advance number released in late April for Q1 of 2019, the change will likely be around the margins. Significant contributors beyond the consumer in the quarter results were inventory buildup and trade balance due to energy prices. Neither of these is likely to change significantly. Most analysts expected the government shutdown to have a noticeable impact in Q1 results, the evidence of which was not seen. Negative impact of the shutdown will most likely not be seen

Commentary, continued

in the second quarter's results and therefore most analysts are forecasting a number in the middle of the 2 – 3% range. Current underlying consumer, business and government activity would affirm those forecasts.

Initial bipartisan conversations about infrastructure investments got off to a positive start. Previous discussions between the president and Democratic leadership in both the House and Senate resulted in acrimonious finger wagging and meeting walkouts; so, to be honest, our expectations for success might have been tamped down. Nonetheless, both parties agreed that spending on infrastructure was long overdue and represented an important national economic security need. The number that participants spoke of was two trillion dollars over a ten-year time frame. How the parties arrived at the spend number is unknown and how they proposed to pay for the expenditure was also left unexplained at the time of the initial press briefing.

"Both parties independently have raised the ideas of a significant national infrastructure investment over the past decade."

Both parties independently have raised the ideas of a significant national infrastructure investment over the past decade. In fact, there have been a few attempts at introducing bipartisan infrastructure bills in the house, but all failed around the issue of payment. The possibilities for payment are many and most center around the combinations of additional deficits, raising user fees such as landing/gate fees, port of entry fees and fuel taxes. All of the above are either passed on to or paid directly by consumers. Public polling suggests that consumers are somewhat supportive of increased fuel taxes, but with a rather large caveat that they want to see results. The appetite for infrastructure investment is strong within both parties; however, the divide over method of payment is as wide as ever, and this divide will be the challenge. Republicans in legislative leadership prefer private dollar support through bond investments and asset purchases (private purchases of toll assets like bridges, roads and ports) while Democratic leadership favors limited taxation on the general public and increasing taxes on heavy users and particularly petroleum based transport users. Large investments are best paid when the cost of the investment is spread over the largest number of investors. How both parties get to yes on what is a publicly desired investment will be yet another significant ideological battle.

To put the proposed infrastructure investment in perspective, our current annual budget deficit is about $795 billion dollars. In the round, we will spend in this fiscal year $4.0 trillion on our federal budget. We will collect $1.6 trillion in payroll taxes and another $1.6 trillion in income taxes (mostly individual) for a total of $3.2 trillion, thereby adding nearly $800 billion to our budget deficit. Without funding the infrastructure investment and assuming the $2.0 trillion cost remains constant over the ten years described, we will add another $200 billion to the deficit each year totaling $1.0 trillion each year. The last federal gas tax imposed was in 1993, which is slightly over a quarter of a century ago. As alternative fuels increase and as mileage of alternative fuel cars and trucks increase, traditional tax at the pump will produce less revenue to support infrastructure investment and therefore thoughtful solutions to the funding of infrastructure investment will be required.

Every major national investment requires a cost to be paid. National defense, National Institutes of Health, Social Security, Medicare, NASA, Consumer Protection, etc., do not exist without taxpayer support. Each also generates an economic benefit that includes jobs, patents, technology development, private company spinoffs, industrial output, efficiencies and improved quality of life for more. The same can be said for infrastructure investment, which could, if financed correctly, be a contributor, not a detractor, for both our short and long-term GDP.

The process to solution is complicated and in the end political, and therein lies the rub. It will be to the current administration's benefit to be able to launch a significant major infrastructure investment plan prior to the 2020 campaign. Doing so could possibly expand the president's base of support and provide cover for many Republican congressmen in competitive 2020 races themselves. With 20 announced Democratic contenders for president, the campaign is well under way. It will be interesting to see if the Democratic leadership gives the president the opportunity to launch this initiative before November of 2020.

"Public polling suggests that consumers are somewhat supportive of increased fuel taxes, but with a rather large caveat that they want to see results."

Greenleaf Gives – Our Communities

Michael F. Odar, CFA
President

Many of you have heard me and other teammates talk about Greenleaf Trust's belief in the importance of the three "C's" – clients, colleagues, and communities. Our commitment to them is part of what makes our culture and firm uniquely different. It should be no surprise that as part of our annual strategic planning process, we develop strategic initiatives for the year that focus on nurturing each of these areas of our business and culture.

From a community perspective, we specifically set out this year to look for ways that Greenleaf Trust could have an even greater impact on the communities in which we live and work. Our team currently serves on non-profit and not-for-profit boards, partners financially with community impact firms through giving and fundraising efforts, and collectively volunteers countless hours each year. With our ingrained spirit of continuous improvement, however, we challenged ourselves to do more in 2019.

Our commitment to the communities we serve was strengthened once again through our fourth annual Day of Caring. Each Presidents' Day, with capital markets closed, teammates are given the day off to form groups and volunteer

Greenleaf Gives, continued

together at a non-profit of their choosing within their respective communities. As our team has grown, so has our impact. Over 1,000 hours on this day alone were spent giving back to food pantries, youth programs, resource centers and other non-profit institutions, many of which are clients within the communities in which we live, work, and seek to remain deeply rooted.

“Each Presidents' Day, with capital markets closed, teammates are given the day off to form groups and volunteer together at a non-profit of their choosing…”

Because we know them at a deeper level, our existing non-profit clients and partners provide us with added inspiration. They also provide us with the opportunity to make a real difference quicker because of their existing infrastructures and rich history of local impact. Therefore, in recognition of this, we are strengthening our support of our non-profit clients and partners in 2019.

This April we also held our first ever “Greenleaf Gives” philanthropy event. We drew the inspiration from other community groups that do this already. The concept is simple – together we can do more. Each team member was given the opportunity to nominate a local non-profit that is close to his or her heart and present that organization's mission to the rest of the team including what the non-profit would do with the funds collected if they were chosen as the winner. Everyone who attended the event donated $20 to receive a ballot. Not only was the event fun and a good way to raise money for a worthy cause, but it was a great opportunity for our entire team to learn more about the amazing non-profits in our community.

At Greenleaf Trust, we believe that small actions multiplied by lots of people can equal a big change. We embrace this teamwork philosophy as we serve on behalf of our clients. Moreover, in 2019, we challenged ourselves to leverage our penchant for teamwork to make an even bigger difference in our communities. I am proud to be part of a not-only-for-profit organization that makes a real difference not only in the lives of our clients, but also the communities in which we live and work.

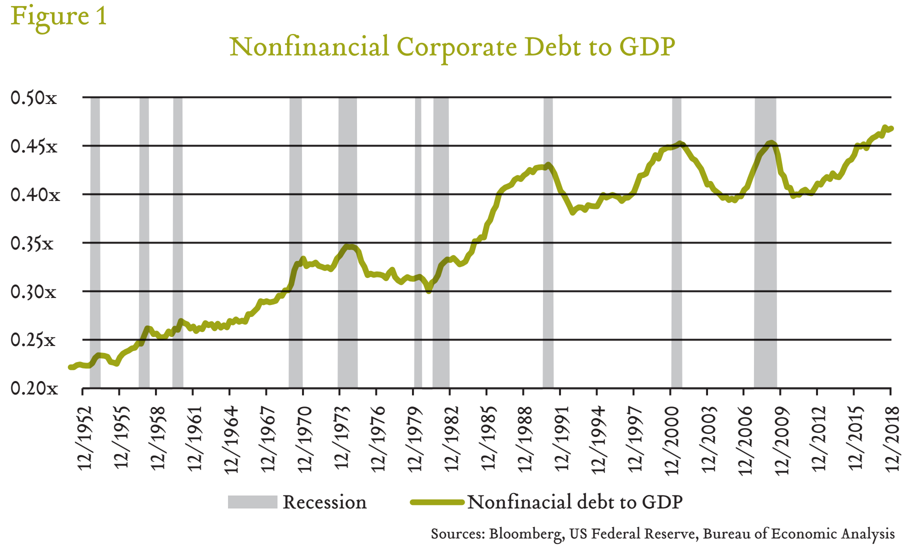
Corporate Debt, a Rising Concern?

Seth E. Kritzman, CFA®
Fixed Income Analyst

Historically high corporate debt levels are making headlines and garnering increased attention from investors and policymakers. Fed Chair Jerome Powell recently called out corporate debt as a risk and IMF Director Tobias Adrian voiced concerns around rising debt levels and deteriorating underwriting standards in pockets of the corporate sector. Let's explore corporate debt levels, and how our in-house research team is responding to the current environment.

Corporate debt is at an all-time high; but how did it get there? What drove the increase in borrowing? The short answer: low interest rates. Following the global financial crisis of 2008, central banks, including the Federal Reserve, slashed interest rates to 0% (or lower) to encourage borrowing and stimulate growth – and it worked! US corporate debt as a percentage of GDP has increased every year since 2011. Corporations have used these borrowed funds for Mergers & Acquisitions, share repurchases, and growth investments in the form of capital projects and Research & Development.

Figure 1



"... corporate debt is at an all-time high; but how did it get there? What drove the increase in borrowing?"

Figure 1 illustrates US corporate debt as a percentage of GDP over time. Viewed this way, it is easy to understand the growing concern among observers. While comparing to GDP is a conventional way to measure debt levels, the approach has some limitations as it relates to evaluating corporate creditworthiness or risk. Specifically, debt-to-GDP ignores:

1. Cash balances — companies are also carrying record levels of offsetting cash on balance sheets, so netting out cash is helpful.
2. Corporate profitability — companies do not service debt with GDP, they do so with profit, so comparing debt to a measure of profitability is more relevant.

Figure 2 adjusts for these limitations by comparing net debt to profits instead of total debt to GDP. Suddenly the outlook is not quite as stark. Debt is up, but

Corporate Debt, continued

offsetting cash balances and profitability are high, mitigating a portion of the risk associated with increased borrowing.

Figure 2

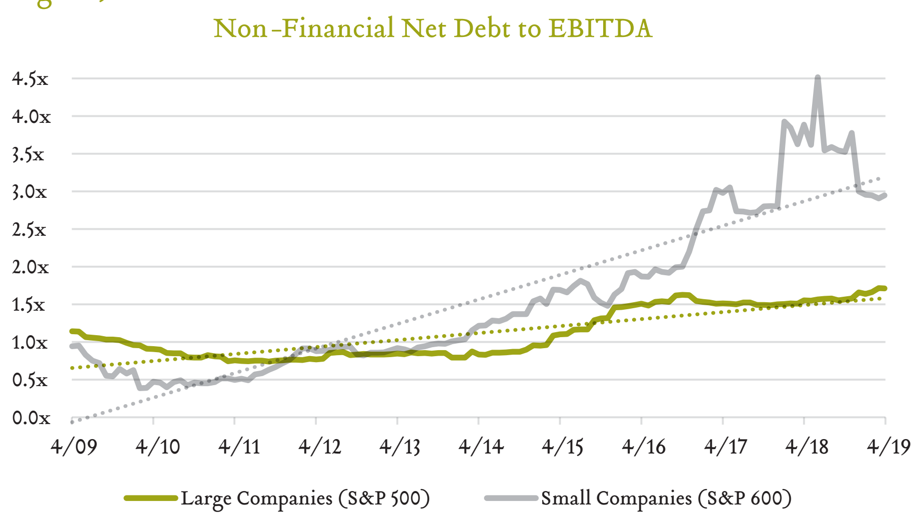
Sources: Bloomberg, US Federal Reserve, Bureau of Economic Analysis

"Real estate and utilities are the obvious standouts, with more than twice the debt levels of other sectors. The concern would be that companies in these industries are at greater risk of defaulting on debt..."

While net debt to profit levels may be reasonable for the market as a whole, is there a more granular understanding we can develop? Profits are an easy way to view the macro level, but earnings before interest, taxes, depreciation and amortization (EBITDA) is a better measure of companies' cash flow. With this view, let us consider debt levels by sector and cap size.

Figure 3 highlights current net debt to EBITDA for each sector of the S&P 500. Real estate and utilities are the obvious standouts, with more than twice the debt levels of other sectors. The concern would be that companies in these industries are at greater risk of defaulting on debt in the event of a recession. Fortunately, higher debt levels in real estate and utilities sectors actually reflect stable cash flows and a greater ability to service debt.

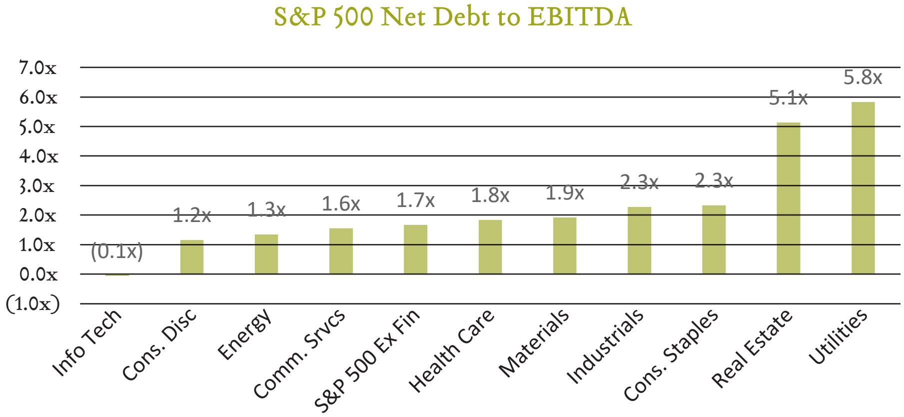
Figure 3



Sources: Bloomberg, S&P Global

Figure 4 compares net debt to EBITDA trends for small companies and large companies. The trend divergence here is somewhat concerning. Both small and large companies have responded to accommodative policy by borrowing more money. Over the last decade, net debt among small companies has increased at a greater rate than EBITDA, while large companies have increased debt levels more ratably with EBITDA.

Figure 4

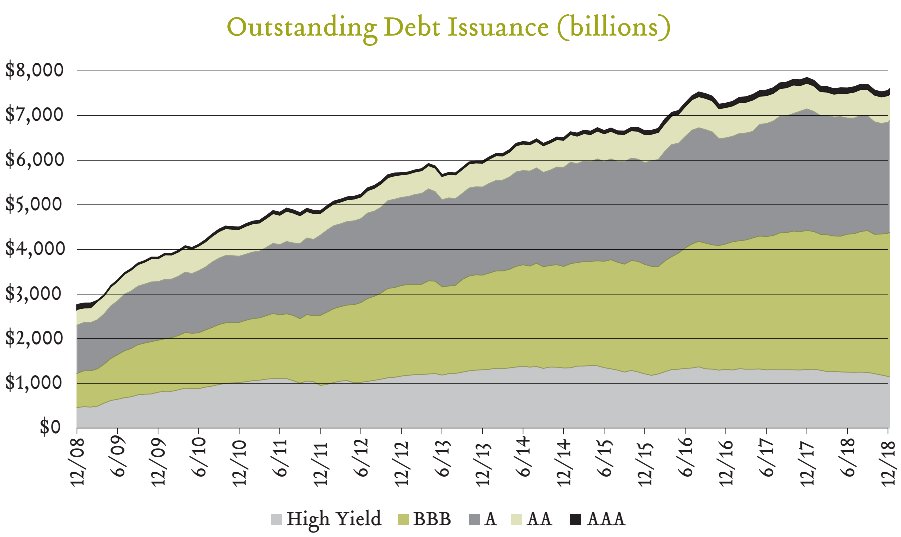


Sources: Bloomberg, S&P Global

It is also important to monitor the overall picture of credit quality as determined by ratings agencies. Figure 5 provides perspective on the changing complexion of credit quality since the crisis. While investment grade issuances have increased significantly, the volume of AAA- and AA-rated debt (highest quality) is virtually unchanged. This means growth has been concentrated in lower-quality A-bonds and BBB-rated bonds. Overall, these dynamics have contributed to a dilution in credit quality.

> "It is also important to monitor the overall picture of credit quality as determined by ratings agencies."

Figure 5



Sources: Bloomberg, ICE Data Indices

Corporate Debt, continued

"Our in-house research team has been taking steps to mitigate some of the risks described above..."

Our in-house research team has been taking steps to mitigate some of the risks described above in client accounts. We recently recommended redeployment of a portion of corporate debt allocations into treasuries and have been working to upgrade the credit quality of remaining corporate debt allocations. While we are not predicting a meaningful disruption in credit markets, we have been preparing for the potential of greater volatility. We will continue to monitor and respond to market dynamics in our efforts to help you reach your financial goals and objectives.

If you would like to discuss these ideas and their impact on your portfolio further, please contact any member of our team. Thank you for the opportunity to serve on your behalf.

Sources:
Bloomberg
US Federal Reserve,
https://www.federalreserve.gov/apps/fof/FOFTables.aspx
https://www.federalreserve.gov/releases/z1/preview/html/default.htm
Bureau of Economic Analysis
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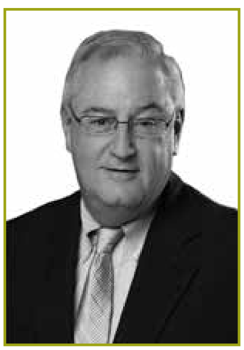
ICE Data Indices



George F. Bearup, J.D.
Senior Trust Advisor

Capacity Planning: Is Your Agent Up to the Task?

A critical part of any estate plan is having a financial durable power of attorney. This document names an individual (agent) to handle the financial and property affairs for another individual (principal). A durable power of attorney for financial affairs is important since it enables another to timely handle and manage a person's financial affairs when they are unable to do so on their own due to unavailability or incapacity.

A durable power of attorney can be immediately effective, such that the agent could be empowered to make financial decisions for their principal when they are inaccessible but still competent, e.g., the principal is on an extended fishing trip in the wilds of Canada and cannot be located. On the other hand, the durable power of attorney can be a springing, which comes into effect upon the occurrence of a future event, such as only when the principal becomes incapacitated. Often the challenge with using a springing durable power of attorney is the determination of if, and when, the principal becomes incapacitated. Surprisingly, many physicians are reluctant to sign a certificate that their patient is incompetent or incapacitated, so that there can be a lingering question, or delay, if the precondition has been met, thus activating the agent's authority to act on the incapacitated principal's behalf.

Early on, a durable power of attorney was a relatively short legal document that pretty much said 'whatever I can do with my property or financial interests, my agent can do the same under this durable power of attorney.' As time has progressed, the approach evolved to itemize each of the powers that the principal grants to his/her agent, thus leading to a long laundry-list type of legal document. [Aside: I used to prepare these 'long form' durable powers of attorney. They inevitably provoked my client's observation that 'you must be billing by the word.'] What is important, however, is that discrete powers and responsibilities can be conferred on the agent, with other powers and authority withheld from the agent, for a variety of reasons. However, one downside to the use of the 'long form' durable power of attorney is if the agent wants to perform an act that is not clearly identified in the 'long form' document. There is a good chance that a third party, like a bank, might refuse to acknowledge the agent's authority, which means that it is less likely the missing power will be imputed to the agent.

Most durable powers of attorney for financial affairs do not have an expiration date. This means that a durable power of attorney created 10 to 15 years ago might still be valid. However, banks and insurance companies are often reluctant to rely upon an agent's assertion of authority under an old durable power of attorney. There is no legal basis to reject the agent's exercise of authority under a durable power of attorney just because it is old, but banks and insurance companies often cite company policy as their reason to reject the agent's exercise of authority acting on the principal's behalf. While there is no legal basis to reject the agent's authority because its age is stale, that often leads to the suggestion that a durable power of attorney for financial affairs should be refreshed every four or five years, simply to remove this impediment from the agent's ability to handle their principal's financial affairs.

"Most durable powers of attorney for financial affairs do not have an expiration date.'

Perhaps the most difficult aspect of a durable power of attorney for financial affairs is to identify who should act as the principal's agent. Just like the selection of a trustee is an extremely important decision, so too is the selection of the correct person to act as agent who will handle the principal's assets and financial affairs 'outside' of the trust. Most individuals name their spouse, and their adult children in the absence of their spouse. However, are those individuals, despite their relationship with the principal, the best to handle the principal's financial affairs when the principal is unable to act on their own behalf? The following are some characteristics to consider when a person is named as an agent to serve under a durable power of attorney:

- Does the candidate lack common sense and judgement?
- Does the candidate have a history of procrastination?
- Does the candidate closely read, listen to, and follow directions, e.g. does he/she refuse to follow the directions of an attorney?
- Does the candidate communicate well with others?

Capacity Planning, continued

- Is the candidate disorganized, often losing items or misplacing important papers?
- Is the candidate entirely trustworthy?
- Is the candidate susceptible to the influence of others, like a spouse or an adult child?
- Is the candidate an arrogant 'know it all?'

Tough questions must be answered when an agent is identified to hold an individual's durable power of attorney with regard to assets and the management of their financial affairs. While an adult child might be the likely candidate to hold their parent's durable power of attorney for financial affairs, that child might still not be the best candidate to serve in that role due to their own personal circumstances. That child may become distracted while dealing with his or her own family matters. That child may have developed an addiction to online gambling or sports betting. Or the most recent sad phenomena in our society, that child may be one of the silent victims of the opioid epidemic. While 'back-up' agents can always be named in the document to serve if the first agent selected is unable to serve, there is no guarantee that the initially designated agent will quietly resign their role, especially if addictions govern their life.

> "… it is always important to assess if the designated agent is still capable of making sound decisions…"

The point to all of this is that it is a good idea to review your durable power of attorney for financial affairs every couple of years to confirm that it still makes sense. Assets change over time. Additional assets may become subject to beneficiary designations that can be modified by the agent who acts under the durable power of attorney. New tax and financial planning opportunities exist that may not have existed in the past and are not identified in the durable power instrument, e.g., the agent's ability to save income taxes by making direct qualified charitable distributions from the principal's IRA. A change in the principal's assets, or new tax planning strategies, may also warrant a modification and update to a durable power of attorney to enhance the agent's flexibility to respond to change in the laws. Finally, it is always important to assess if the designated agent is still capable of making sound decisions under the durable power of attorney in the principal's best interests and timely account to others when significant financial decisions are made in reliance upon the principal's durable power of attorney.

Spring into Retirement Savings

Lisa A. Hojnacki
Participant Services Coordinator – Team Lead

Spring is a time for planting and growing, something we all want for our retirement savings. April is National Social Security Month and April 8-12 was National Retirement Planning Week. Both serve as great reminders to take action this spring to prepare your financial garden so that you may harvest a healthy retirement later on.

Experts agree that when saving for a healthy retirement, it is key to take small, consistent action steps over a long period. "Planning for retirement is not something we can put off until a later date. The time to plan is now," said businessman Bob Reid. Some may ask, "isn't social security enough?" For most of us, our social security benefit will not be enough to sustain us through our retirement years. The average benefit for Americans is currently $1,400 per month. Benefits are based on your highest 35 income earning years. To determine your estimated benefit and apply for retirement and/or Medicare benefits among other things, visit ssa.gov/mysocialsecurity.

Some key action steps you can take each year are to increase your contribution rate, review your investment strategy and use a retirement calculator to project your savings. We recommend increasing your contribution rate at least 1% annually until you reach the maximum contribution limit or retirement. In 2019, you can contribute up to $19,000 if you are 49 or under and up to $25,000 if you are 50 and older. The effect of making annual contribution rate increases can result in more than twice the retirement savings of someone who never makes an increase at all.

"Many investors miss out on investment returns by holding investments that are too conservative for their age."

It is also important to review your investment strategy annually if you are not invested in a target date fund. Many investors miss out on investment returns by holding investments that are too conservative for their age. To help determine your investment profile consider your age, your savings objective, liquidity need and your personal risk tolerance. Typically, young investors with more than 7 years to retirement, who have an objective of savings growth and low liquidity needs, are well-suited with an aggressive portfolio allocated primarily to stock holdings. Those with fewer than three years to retirement, who have an objective of protecting their savings along with high liquidity needs are best-suited with a conservative portfolio allocated primarily to bond holdings.

You could have ...

$372,204 at age 65 by saving 5% and never increasing (5% is about $30/week)

$663,986 at age 65 by increasing 1 % every year for 5 years (10% is about $75/week:)

$853,943 at age 65 by increasing 1 % every year for 10 years (15% is about $115/week)

ASSUME: Begin saving at age 30; retire at age 65; $40,000 annual income; 5% starting contribution; 8% rate of return (aggressive investment strategy); $0 beginning balance

Nicole E. Asher, CFP®, CPWA®, ChFC®
Vice President
Senior Wealth Management Advisor

"...I do not feel the need to pay homage to a common lawn weed on "Dandelion Day" (April 5th)!"

Take a Holiday from Fake Holidays

I don't know about you, but I'm thinking how in the world did we end up with so many obscure holidays!? I like to celebrate as much as the next person, but I do not feel the need to pay homage to a common lawn weed on "Dandelion Day" (April 5th)! Pseudo-official holiday celebrations throughout the country have become increasingly popular, while often ridiculous in nature. By the time you are reading this, April will be over and so will "Don't Go to Work Unless it's Fun Day" (April 3rd) and "New Beers Eve" (April 6th). You probably also missed "No Housework Day" (April 7th), "That Sucks Day" (April 15th) and "Blah, Blah, Blah Day" (April 17th). The growing list makes me shake my head in bewilderment. These peculiar dates of "honor" have me worried. I am concerned that these bizarre holidays, like "Tell a Lie Day" (April 4th), will dilute those meaningful days of recognition such as Veterans Day, Martin Luther King Day or those months that bring awareness to worthwhile causes like Cancer Prevention, Domestic Violence or Autism, just to name a few. Because of this, I felt it worthwhile, for those who may have missed it, to bring attention to Social Security Awareness month, which was also celebrated in April. While the month may be over, this is a wonderful opportunity to increase public awareness and remind everyone how important and easy it is to check on your personal Social Security data.

We strongly recommend that our clients go online, if they have not already done so, and create their own my Social Security account at SSA.gov/mysocialsecurity. The process is quick and allows you to:

- Get an estimate of future benefits
- Check your earnings history
- Apply for benefits
- Check your application status
- Set up or change direct deposit
- Get a proof of income letter
- Change your address
- Get a replacement 1099 or 1042

You do not have to be close to filing age to review this information or get an account. It is recommended that anyone 18 or over, with a valid email and U.S. mailing address, establish an account. Not only can you make certain that your earnings are posted properly, but you can ensure that your account is safe with your chosen username and password.

In light of Social Security Awareness month, it is also worth mentioning that Social Security has seen a recent spike in phishing scams. While the Social Security office may contact you via phone, it is typically as a follow up to an issue that you initiated. If you receive a call from someone claiming to be from the Social Security office and it was not as a follow up on a known issue, simply hang up! You should never provide personal information, such as your Social Security number or bank account information, to anyone that you don't know. While the caller may threaten to have your benefits terminated, report that your account "has been suspended for suspicion of illegal activity," or state that your "assets will be frozen until you call them back," this is all part of the scam. These callers can be convincing and are trained to be bullies and to intimidate their "victims." Rest assured, they do NOT have the power to alter or suspend your benefits or freeze your assets. The benefit of having already established a my Social Security account is that you can easily go online and confirm that there have been no changes to your benefit. You can also contact Social Security at 1-800-772-1213 or report suspicious calls to the Office of the Inspector General at 1-800-269-0271 or https://oig.ssa.gov/report.

Another focus of Social Security Awareness month is deciding when and how to take Social Security benefits. Many people decide to take their benefits early, because they are looking at the short-term windfalls rather than the long-term effects on their financial security. Many get so focused on not getting anything and losing out in the early years that they fail to realize the larger benefits that occur later in life. Having that safety net when you are 90 years old can be more important than having extra money for dining out in your early retirement years. Many retirees don't need the money early; they want it early. There are situations where it may make sense to take your Social Security early, such as if you are in poor health, unmarried, divorced or if you have no other assets to draw from. While the number of ways that you can file for your Social Security benefits may have decreased in recent years, there are still numerous strategies available to optimize your benefit. The team at Greenleaf Trust stands ready to assist you with those decisions, as we run thousands of optimization scenarios on behalf of our clients to determine the approach that will maximize their lifetime wealth.

"Another focus of Social Security Awareness month is deciding when and how to take Social Security benefits."

So while you may have missed "Lumpy Rug Day" (May 3rd) or "National Candied Orange Peel Day" (May 4th), I hope that your disappointment is short-lived. If you missed Social Security Awareness month in April, however, and you made it to the end of this article, then I have been successful in bringing awareness to you today. Hopefully, these newly invented holidays haven't discouraged you from the national awareness of the many worthwhile organizations or non-profits that could use the special attention. While many of us stand ready to honor those who have lost their lives while fighting for this great country on Memorial Day, I have to ask myself, who's celebrating "National Sea Monkey Day"?

Judy Grace, J.D.
Vice President
Senior Trust Relationship Officer

Recent Michigan Legislation Regarding Directed Trusts

A growing trend in estate planning is the use of a directed trust. Michigan joined the movement on December 28, 2018, when Governor Snyder signed into law the Michigan Uniform Directed Trust Act (MUDTA). The law became effective March 29, 2019 and has been added to the Michigan Trust Code (MTC) under section 7703(a).

Several states have had directed trust or similar statutes for many years. For example, Delaware created a directed trust statute over 20 years ago. As more states have become interested in or have actively implemented similar law, the National Conference of Commissioners on Uniform State Laws created The Uniform Directed Trust Act (UDTA) in 2017 to act as a "template." The UDTA is the basis for the newly implemented Michigan Uniform Directed Trust Act.

So, what is a "directed trust" and why is it important? Generally, a trust is considered a directed trust when the trust document grants a non-trustee a power over a part of the trust's administration that is normally a power of the trustee. Trustees and trust creators might want the ability to separate or isolate duties for certain activities, voting on closely held family corporate actions, for example, or to allow for family members or advisors to bring personal or expert knowledge into the decision making process. When a trust is "directed," it is important to identify the responsibilities and liabilities of the person or organization holding the power to direct and the person or organization subject to such direction.

"... a trust is considered a directed trust when the trust document grants a non-trustee a power over a part of the trust's administration that is normally a power of the trustee."

Of course, the legal terminology and definitions are important. The MUDTA defines several important terms including:

- A power of direction is a power over a trust that is given to a non-trustee.
- A trust director is defined as either an organization permitted to exercise trust powers in Michigan, or an individual, if that person is granted a power of direction.
    - ◊ A trust director can be a beneficiary or the settlor (creator) of the trust.
- A directed trustee is defined as a trustee subject to a power of direction.

A simple example of how a directed trust might work: Assume the settlor of a trust gives a trust director the power to determine or approve distributions to beneficiaries from the trust. The trust director instructs the directed trustee to distribute $10,000 to one of the beneficiaries. As long as the directed trustee knows that the trust director is acting within the scope of responsibility as defined in the trust document, the directed trustee must make the distribution to the beneficiary.

The directed trustee is under no obligation to second-guess the decision or instruction of the trust director. If the directed trustee thinks the decision is a bad one, he can, but does not need to, speak up to the settlor, the trust director or the beneficiary. If the directed trustee does question the distribution, he is under no obligation to do so in the future even under the same set of circumstances.

As one might expect, both trustees and trust directors have a duty to provide to the other the information necessary for each to perform his/her duties under the terms of the trust. Additionally, neither is liable for relying on the information provided, assuming it was not relied upon in bad faith.

MUDTA relieves the directed trustee from liability for carrying out the direction of the trust director as long as that direction was not obtained by the directed trustee's collusion or fraud. This standard of liability is quite narrow and favorable to the directed trustee. This is one of several places where state laws can differ. In fact, Michigan lowered the directed trustee's standard from willful misconduct, which is the standard in the Uniform Directed Trust Act.

"As one might expect, both trustees and trust directors have a duty to provide to the other the information necessary for each to perform his/her duties under the terms of the trust."

The MUDTA consists mostly of default rules. The settlor of a trust has the ability to depart from these default rules. For example, the settlor can require more responsibility or a higher standard from the trust director but they cannot lower the trust director's responsibilities below a minimum fiduciary obligation. The trust director's responsibilities cannot be lower than the responsibilities a trustee has to the beneficiaries if that trustee held the power that the trust director has been given. All to say that trust directors and directed trustees continue to carry significant fiduciary responsibilities to and for the beneficiaries of a trust.

With the very recent addition of MUDTA to the MTC, there is uncertainty as to how Michigan courts will handle actions brought by "dissatisfied beneficiaries" of directed trusts. It will take time for drafting attorneys to become familiar with the law, create language that meets the needs of clients and corporate trustees, and for corporate trustees to become comfortable with the risk / reward that this new Michigan legal framework provides.

With other states, such as Delaware, with decades of case law and tested directed trust statutes, trust settlors and trustees have options that should be considered. Greenleaf Trust is fortunate to be in the position to have both Delaware and Michigan trust companies so that we can work in either state and choose the jurisdiction that makes the most sense for the trust, the beneficiaries, the trust director and the trustee.

Stock Market Pulse

Index	4/30/19	Total Return Since 12/31/2018
S&P 1500	678.20	18.24%
Dow Jones Industrials	26,592.91	14.79%
NASDAQ	8,095.39	22.39%
S&P 500	2,945.83	18.25%
S&P 400	1,970.74	19.09%
S&P 600	975.06	15.91%
NYSE Composite	13,060.65	15.81%
Dow Jones Utilities	790.00	11.79%
Barclays Aggregate Bond	108.59	2.73%

P/E Multiples	4/30/19
S&P 1500	19.3x
Dow Jones Industrials	16.9x
NASDAQ	23.7x
S&P 500	19.3x
S&P 400	19.5x
S&P 600	21.9x

Key Rates

Fed Funds Rate	2.25% to 2.50%
Tbill 90 Days	2.38%
T Bond 30 Yr	2.93%
Prime Rate	5.50%

Current Valuations

Index	Aggregate	P/E	Div. Yield
S&P 1500	678.20	19.3x	1.86%
S&P 500	2,945.83	19.3x	1.88%
Dow Jones Industrials	26,592.91	16.9x	2.16%
Dow Jones Utilities	790.00	20.9x	3.10%

Spread Between 30 Year Government Yields and Market Dividend Yields: 1.07%

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