**Directed Trusts: Best Practices for Working with Advisors, Trust Protectors and Excluded Trustees – When to Say No!**

# Investment Decisions Checklist (3313 & 3313A)

1. Trust Documents

*Consider including the following:*

|  |  |
| --- | --- |
|  | A reference to Section 3313 and/or Section 3313A and quotation of key language. |
|  | An affirmative statement that direction letters must be “as acceptable to the trustee” and a statement that any revisions requested are assumed to be due to vagueness, lack of specificity, or because the direction confers discretion on the trustee. |
|  | A statement regarding the form of direction (such as “in writing” by email, fax, etc.). |
|  | A statement regarding the trustee’s ability to rely on the investment fiduciary with regard to any representations and warranties contained in documents it is asked to sign. |
|  | A statement confirming the value of trust assets as well as the investment fiduciary’s on-going duty to furnish such information to the trustee. |
|  | A statement confirming the investment fiduciary’s ongoing duty to direct the trustee with regard to management or participation in the management of any entity owned by the trust. |
|  | An affirmative acknowledgement of the ongoing duty of all fiduciaries to share information with one another relevant to the performance of their duties under the trust, with a specific reference to providing an administrative trustee with all information regarding the assets of the trust and related transactions. |
|  | If the trustee is responsible for tax return preparation, but not involved in investment transactions, it may be advisable to include an affirmative statement that the trustee can rely on such information as is provided by the investment fiduciary when preparing the trust’s income tax returns. |

1. Direction Letters

*Has the following been addressed in the direction letter?*

|  |  |
| --- | --- |
|  | Utilizes the word “direct” and is in writing |
|  | Identifies the language in the Trust Agreement that authorizes the direction and references Section 3313 and/or Section 3313A, as applicable |
|  | Is specific as to the action to be taken and the documents to be signed (preferably they are attached) |
|  | Address issues such as representations and warranties, the granting of a limited power of appointment, etc. |
|  | Specifically address the asset and its value |
|  | Recite the ongoing duties of the investment fiduciary, such as regular valuation, appointment of managers for the underlying entities, etc. |

1. Other Concerns with directed trusts

*Has the following been discussed?*

|  |  |
| --- | --- |
|  | Additional reporting requirements derived from CRS and FATCA |
|  | Regulatory requirements for BSA/AML issues |
|  | Knowledge of any participation in high risk businesses or structuring models |
|  | Reputational risks for the trust company relating to undesirable or high risk business affiliations. |