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Uniform Prudent Management of Institutional Funds Act

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Presenters

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Agenda

- What is UPMIFA?
- When does UPMIFA apply?
- Four Key Factors Guided by UPMIFA
 - Management of funds
 - Endowment spending
 - Delegation
 - Gift restrictions
- UPMIFA in practice

What is UPMIFA?

- Uniform Act governing the management of “Institutional Funds” – funds held by an institution exclusively for charitable purposes
- Approved by the National Conference of Commissioners on Uniform State Laws in 2006
- Adopted by Oregon in 2007 – Effective 1/1/2008
- Replaced UMIFA (historical value)
- Oregon Revised Code 128.305 – 128.336

When Does UPMIFA Apply?

- Applies to “institutional funds”
 - Fund held by institution for its own use
 - Includes endowment funds
 - Includes “component funds” at community foundation (?)
- Does **not** apply to:
 - Most charitable trusts
 - “Program-related assets”

Four Key Issues Informed by UPMIFA



The standards of conduct in managing and investing funds



Factors to consider in determining appropriate endowment spending



Limiting liability through proper delegation



Releasing or modifying gift restrictions

"Subject to the intent of the donor as expressed in the gift instrument"

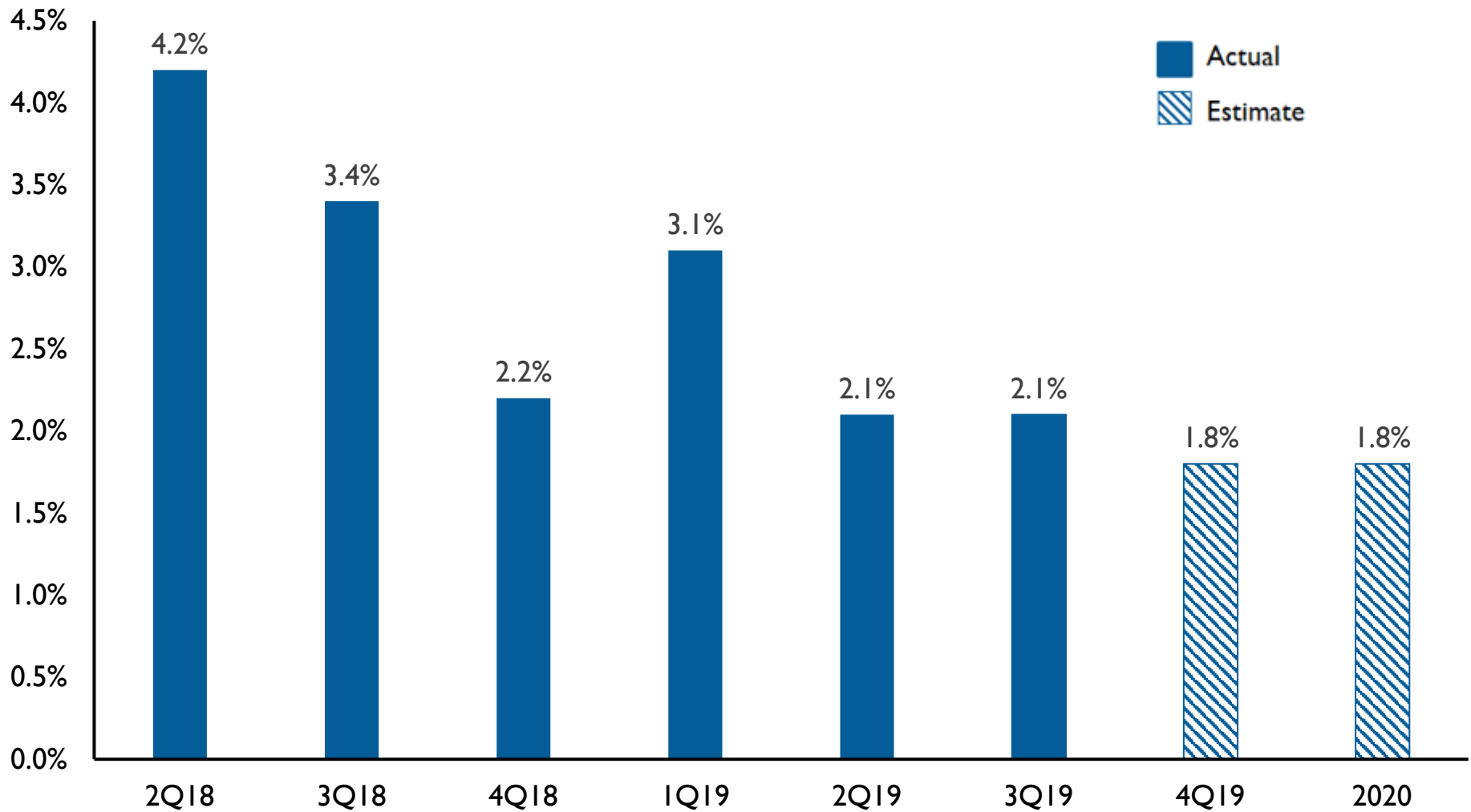
Standards of Conduct in Managing and Investing Funds

- Prudent Investor Rule (like UPIA)
- Similar to “business judgment” rule
- “In good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances”
- Shall consider the charitable purposes of the institution and the purposes of the fund
- Costs must be reasonable and appropriate
- Shall make a reasonable effort to verify facts

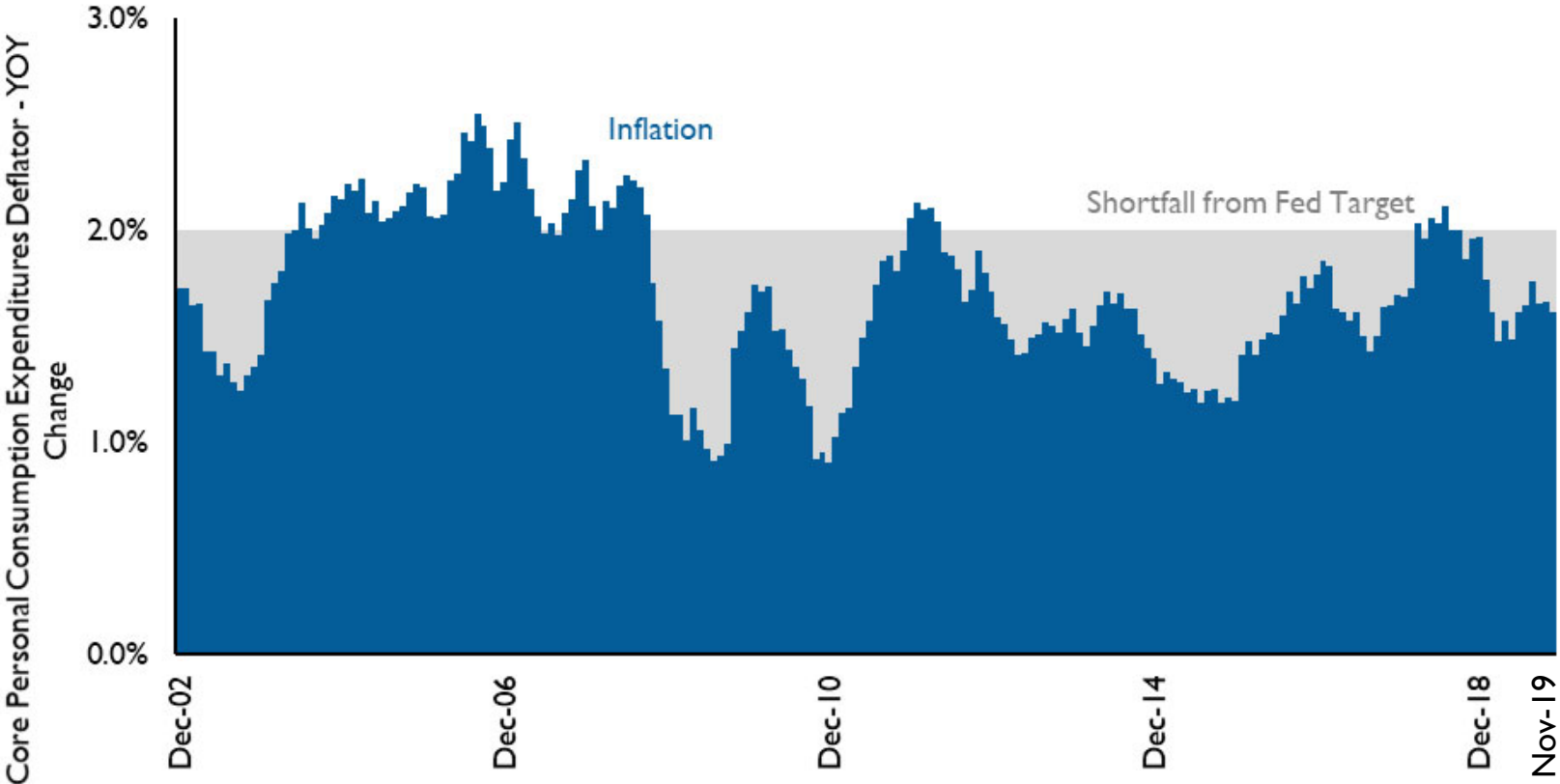
General Economic Conditions

- Later in economic cycle
- 10+ years of a bull market
- Low unemployment
- Low interest rates, likely to go lower
- Global growth is slowing and so are corporate earnings
- PMI declining
- GDP under pressure

General Economic Conditions – U.S. GDP



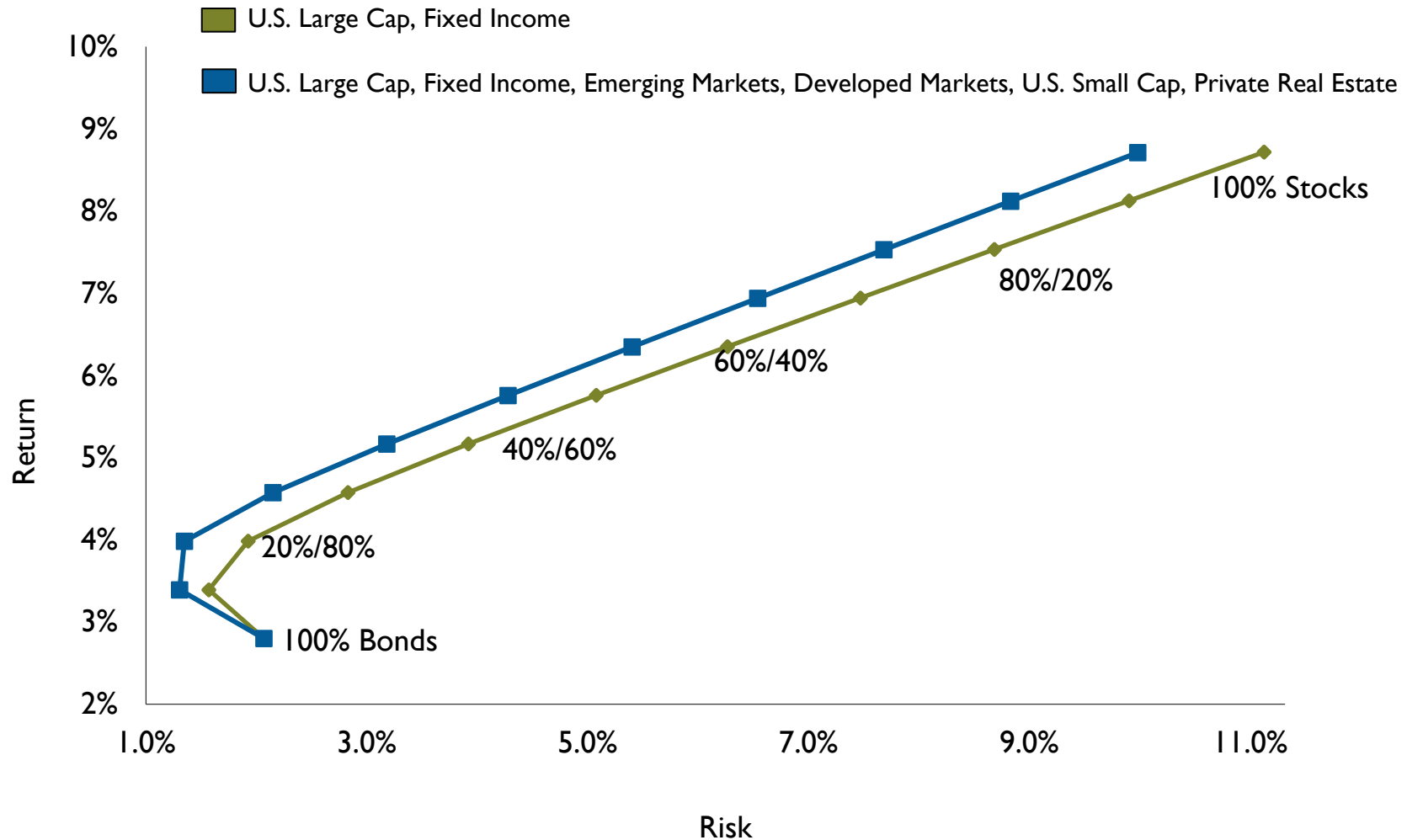
Possible Effect of Inflation or Deflation



Expected Tax Consequences

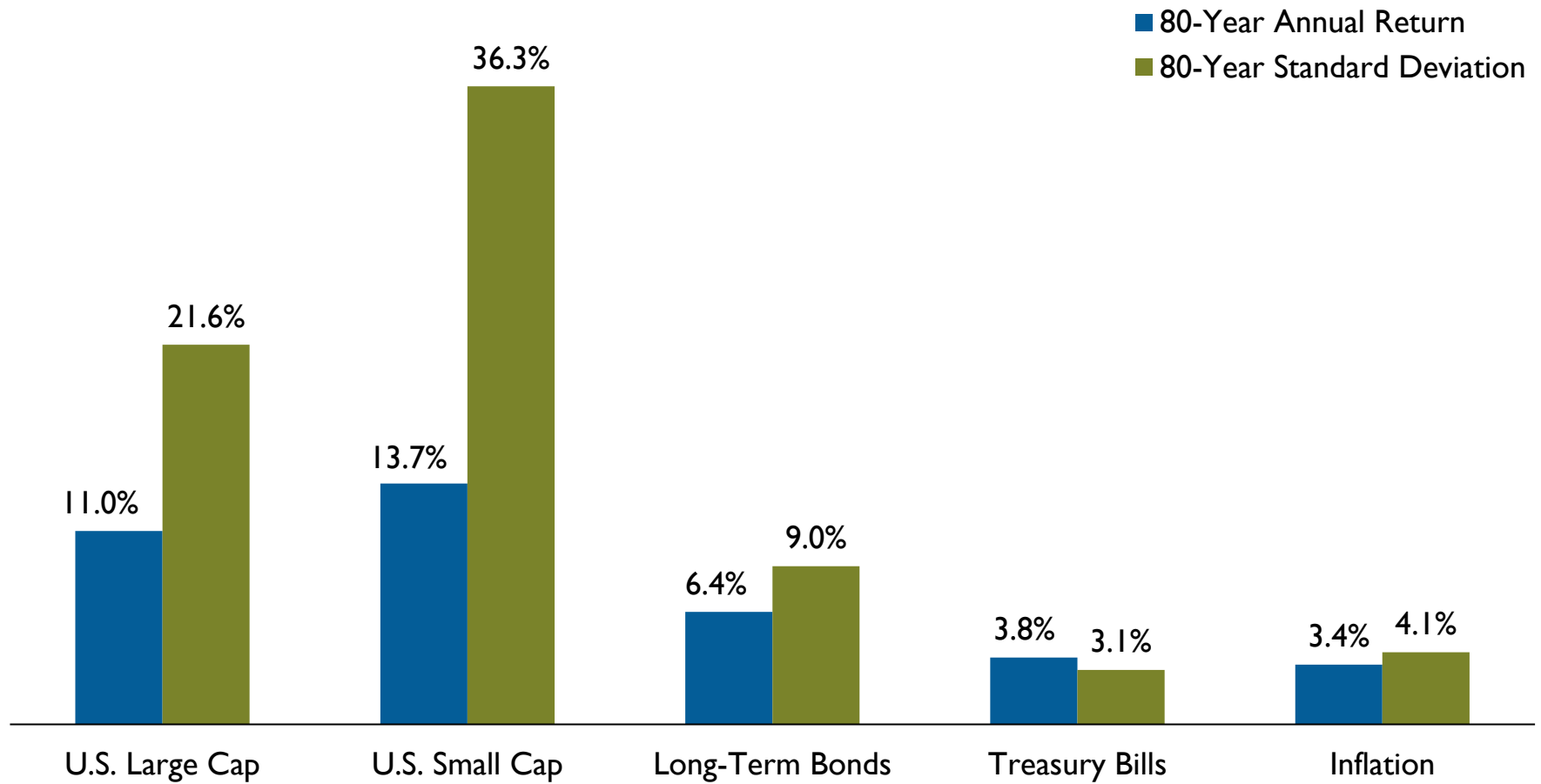
- Unrelated Business Income Tax – “UBIT”
- Dividends and interest are generally exempt
- Private investments may trigger UBIT

The Role of Each Investment Within the Portfolio



Expected Return and Risk derived from 5-year forward-looking assumptions

The Expected Total Return



Source: FactSet

Other Resources of the Institution

- An organization with other “resources” may be able to afford greater risks
- A resource might be other unrestricted funds, a large operating reserve or consistent cashflow from other sources – tuition, insurance reimbursement, etc.



**Endowment
Funds**



Other

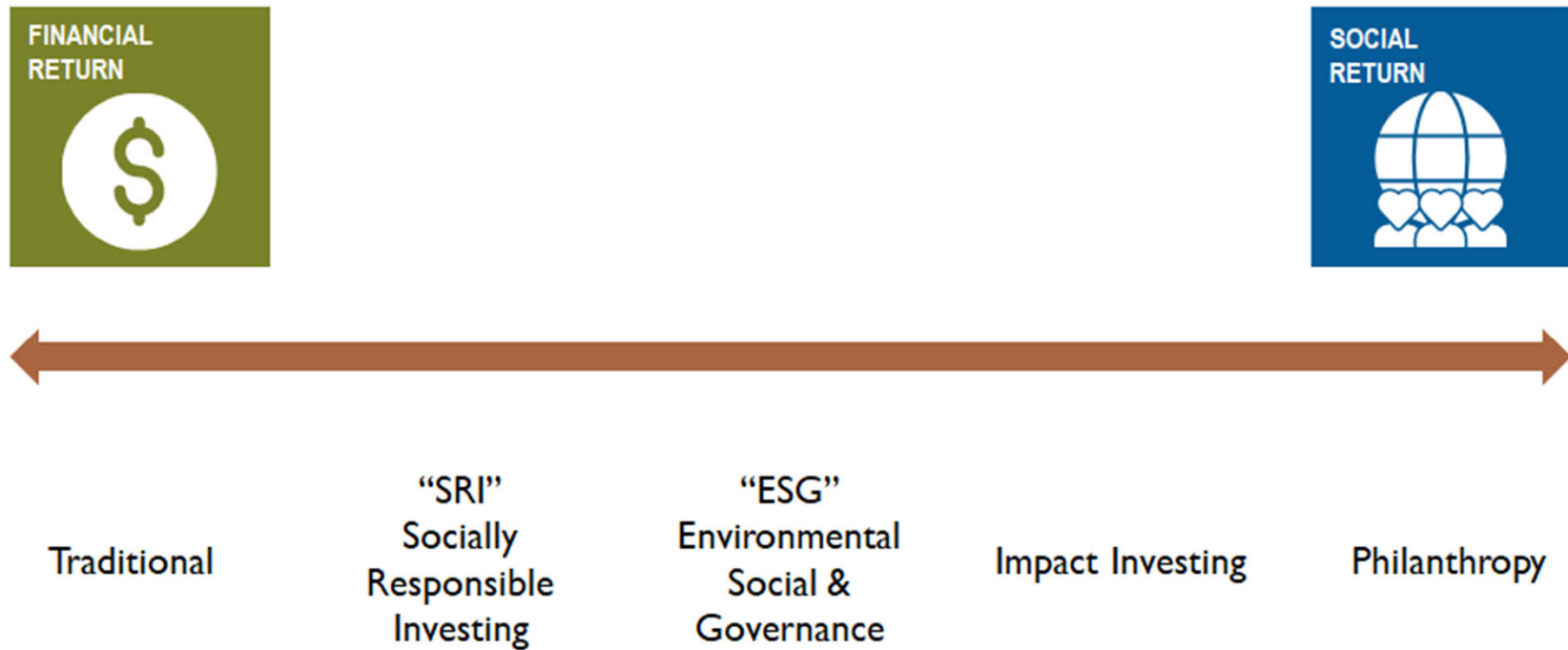
The Need to Make Distributions and to Preserve Capital

High distributions
High dependency



Lower risk

An Asset's Special Relationship or Value to the Purposes





Endowment Spending

- Board may “appropriate for expenditure so much of an endowment fund as the [board] determines is prudent”
- Subject to standard of care (prudence)
- Must consider
 - The duration and preservation of the endowment fund;
 - The purposes of the institution and the endowment fund;
 - General economic conditions;
 - The possible effect of inflation or deflation;
 - The expected total return from income and the appreciation of investments;
 - Other resources of the institution; and
 - The investment policy of the institution

Which Funds are Endowment Funds?

- Gift instrument must specifically state the limitation
 - Endowment, or
 - ...use only “income,” “interest,” “dividends” or “rents, issues or profits,” or “to preserve the principal intact,” or words of similar import
- If spending is restricted, funds are assumed to be permanent unless duration is specifically limited

Endowment Spending: Presumption of Imprudence

- Expenditure of more than **7 percent** of fund creates “rebuttable presumption of imprudence”
 - Based on value of fund assets averaged over “not less than three years”
 - **Optional** provision – included in Oregon UPMIFA at insistence of AG
 - No “presumption of prudence” for payout of less than 7 percent
- FAS treatment?!

Limiting Liability Through Proper Delegation

- May delegate (Duty) to an external agent the management and investment of an institutional fund
- Subject to a duty of good faith, care and prudence in:
 - Selecting an agent – RFP
 - Establishing the scope and terms of the delegation – Contracts and IPS
 - Monitoring the agent's performance and compliance with the scope and terms of the delegation – Reports, IPS, Benchmarks

Limiting (and accepting) Liability Through Delegation

- An institution that complies... is not liable for the decisions or actions of an agent
- Agent owes a duty to the institution
- By accepting delegation, an agent submits to the jurisdiction of the courts
- An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state
- Process driven not results driven

Donor Restrictions

- Accounting rules vs. legal principles
- Accounting rules do **not** affect the board's rights and obligations

Donor Restrictions

- FASB Accounting standards:
 - “Assets with donor restrictions”
 - “Assets without donor restrictions”

Donor Restrictions

- Legal principles – also only two types of assets:
 - Restricted (charitable trust law)
 - Duration (endowment)
 - Purpose
 - Unrestricted

Restrictions

	Donor Restricted	<u>Unrestricted</u>	
		Board Restricted	No Restrictions
Purpose	Designated	Designated	Flexible Purpose
Duration	Endowment	Quasi-Endowment	Flexible Duration
Purpose and Duration	Designated Endowment	Designated Quasi-Endowment	FLEXIBLE

Donor Restrictions - So Who Cares?

- Donor
- Donor's family
- Attorney General (AG)

Unrestricted Funds

- Importance of recordkeeping
 - Effect of commingling
 - Fund accounting
- “Quasi-endowment” funds
 - Board-restricted
 - “Rainy day” fund
 - Effect on future boards?

Perpetuity is a Long Time...

- Cy Pres
 - Anglo-Norman, for “so near”
- Equitable Deviation
 - “Cy pres lite”
- UMIFA/UPMIFA

Release or Modification of Restrictions

- Board may release or modify restrictions with consent of donor(s)
- If donor consent unavailable:
 - Court order
 - Notice to AG
 - Management/investment restriction must be “impracticable or wasteful” or, because of unanticipated circumstances, modification will further the purposes of the fund
 - Charitable **purpose** may be modified only if restriction is “unlawful, impracticable, impossible to achieve or wasteful”

Release or Modification of Restrictions

- Board may release or modify restriction if:
 - Fund value less than \$25,000,
 - Fund is at least 20 years old,
 - Notice to AG, **and**
 - Institution uses the fund assets “in a manner consistent with the charitable purposes expressed in the gift instrument”
 - **Optional** provision – included in Oregon

UPMIFA in Practice

- Investing:
 - Investment Policy Statement
 - Consider ALL relevant factors
 - Custodian Statements
- Delegating
 - Selection Process/ RFP
 - Contract with Investment Advisor
 - Investment Policy Statement
 - Monitoring Performance Reports and Statements
- Endowment Spending
 - Spending Policy
- Restrictions
 - May be modified with donor or AG approval

Questions?

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Mary Lago is a member of Ferguson Wellman's investment team and wealth management committee. She is a portfolio manager with individual and institutional clients concentrated in Portland, Bend, Medford, Seattle and Vancouver. Lago is a CERTIFIED FINANCIAL PLANNER[™] professional (CFP[®]).

As a certified trust and financial advisor (CTFA) with over 20 years of wealth management experience, Lago is a valued resource for individual and multi-generational family clients regarding investment, planning, and trust/estate matters. She also advises charitable organizations on endowment management and planned giving techniques.

Prior to joining the firm in 2015, Lago worked as a vice president and Oregon region manager for Washington Trust Bank in its wealth management and advisory services division. Lago previously worked for Union Bank and First Republic Bank in their private bank and trust divisions. She received her B.S. in business administration from Linfield College where she graduated magna cum laude.

Lago serves on the boards of Oregon Health and Science University Foundation, as President of the Estate Planning Council of Portland and also serves on the Albertina Kerr Centers Foundation Investment, Gift Acceptance and Planned Giving committees. Previously, she served as Chair for Albertina Kerr Centers Foundation and Co-Chair of the Community Promise Campaign. Lago also serves OHSU on the gift planning council, the center for ethics steering committee, the nominating and engagement committee. She was recognized in 2018 by the Portland Business Journal as one of Portland's "Women of Influence" and in 2013 as one of Portland's "Forty Under 40."

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Jeffrey C. Thede began his legal career with Miller Nash LLP in 1979 and was with the firm until December 2007, when he left Miller Nash to form Thede Culpepper Moore Munro & Silliman LLP with four of his partners. Jeff's practice emphasizes estate and trust planning and administration, charitable planning, and tax-exempt organizations. He is admitted to practice in Oregon and Washington.

Jeff is a member and past president of the Estate Planning Council of Portland, a Fellow of the American College of Trust and Estate Counsel, the Chair of the ACTEC Charitable Planning and Exempt Organizations Committee, and a member of the Northwest Planned Giving Roundtable.

Jeff volunteers with a variety of charitable organizations, including colleges, foundations, and land trusts. He has served on the boards of Portland Opera Association, the Oregon Cascades Chapter of the American Red Cross, and the ACTEC Foundation. He is also a member of the planned giving advisory committees of Oregon Health & Science University Foundation and Providence Foundations—Oregon. Jeff is a past president of Oswego Lake Country Club.

Jeff earned his bachelor's degree at the University of Oregon and his law degree at Willamette University College of Law.

Jeff has been married to his wife Jan since 1979 and has two children. He enjoys golf, traveling, thinking about learning a foreign language, thinking about learning to play the piano, and the occasional game of cards.