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The association taps Steven Cohen as summer summit speaker

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Wealth management group to become Ascent Private Capital Management

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Bill Donnelly of Val Executive Resources Group explains why staff recruitment is about to boom

FEATURE

Private practice

Christopher M. Reimer explains the advantages of a Wyoming private trust company for managing wealth

COMMENT

Growth through adversity

Jeff Spears on independents and brokers growing assets



Private practice

Christopher M. Reimer, partner with Long Reimer Winegar Beppler LLP, explains the advantages of a Wyoming private trust company for managing private wealth

Wealthy families have long had the luxury of using private trust companies to obtain flexibility and control over assets, maintain

privacy, create the necessary contacts to administer a trust in a jurisdiction with favorable laws and shield assets from transfer taxes. Legal changes in many states, including Wyoming, now put such companies within the reach of families of more modest wealth.

The state of Wyoming offers several advantages that investment advisors should consider when determining where to establish a private trust company for the management of family wealth. Such features include no state tax on trust assets, both regulated and unregulated private trust companies, no regulation on investment advisors, and settler-friendly trust laws.

PRIVATE TRUST COMPANIES

A private trust company is an entity, typically a corporation or LLC, which functions as a family's separate identity for the purpose of managing assets and business interests. Such a company is typically owned by family members and acts as the trustee for trusts created for the family's benefit, in addition to providing other fiduciary and agency services. Private trust company advantages include increased privacy; the separation of investment management from family businesses; financial parenting, in which younger family members are integrated into the management of family wealth; and administrative centralization of estate, tax, and investment planning. A private trust company can act as a permanent trustee, resolving situations in which irrevocable trust provisions impede the appointment of successor trustees.

Above all, private trust companies provide families with flexibility. They can be organized in a number of different ways based on the needs of a particular family. A family may decide how much control it wants trust asset investment, how diversified trust investments should be, how to structure the entity to control costs, how to administer trusts, and so on, based on their own needs, rather than the one-size-fits-all pro-

cedures imposed on public trust companies.

Private trust companies can be effectively integrated with broader asset protection goals. Establishing a private trust company as a limited liability company (LLC) can protect family members serving on an investment committee from personal liability for their decisions. Wyoming was the first state to allow for the creation of an LLC and remains at the forefront of LLC innovations. The Wyoming legislature recently amended its statute to clarify that the charging order provides the sole creditor remedy against LLC assets, even if the LLC has only a single member. Creditors have no foreclosure or lien rights against Wyoming LLCs. Unlike in many other states, a creditor can only satisfy a judgement out of a member's interest in an LLC by obtaining that member's right to economic distributions. Creditors often find this remedy unattractive because the LLC is never required to make such distributions, easing the settlement process. Finally, Wyoming's statute prevents foreclosure on LLC interests and reduces the risk that a creditor may "pierce the veil" of an LLC and satisfy claims against the private trust company out of a family member's personal assets.

Private trust companies can be combined with other asset protection tools developed by modern trust law jurisdictions. Spendthrift trusts can prevent creditors from satisfying judgments out of assets that remain in trust. In top trust situs jurisdictions like Wyoming, such protection is available even for self-settled trusts, subject to standard fraudulent transfer limitations. Further, states like Wyoming protect discretionary distribution interests until they have actually been distributed, regardless of whether a trust has a spendthrift clause. Wyoming provides a clear definition of 'discretionary' and prevents creditors from attaching such trust distributions.

UNCHARTERED PRIVATE TRUST COMPANIES

While the Securities and Exchange Commission (SEC) considers many trustees investment advisers, many advisers to private trust companies have avoided registration by seeking shelter under the private adviser exemption. This will change when

the Dodd-Frank Wall Street Reform and Consumer Protection Act becomes effective in July in 2011. Fortunately, the Act creates a new exception for family offices and the SEC is formulating rules that should allow private trust companies to avoid registration if they meet certain requirements (such as only having family clients, being wholly owned and controlled by family members, and not holding themselves forth to the public as investment advisers). While the final rules remain uncertain, many trustees of private family trust companies will likely be exempted from federal regulation.

Traditionally, state laws required the chartering and registration of private trust companies, much like their public counterparts. Several states, such as Alaska, Delaware, and South Dakota, have changed this trend, subjecting private trust companies to less stringent regulations, provided that they only benefit people who are related to each other. However, only Wyoming and Nevada permit truly unregulated private trust companies. Wyoming's definition of "trust business" requires a trustee to hold itself forth to the public as a trustee and perform such duties in the ordinary course of business. The Wyoming Attorney General has interpreted this to mean that a private trust company that does not provide services to the general public cannot be subject to mandatory regulation as a trust company. As of 2009, Nevada also permits unregulated private trust companies, provided that

other than the District of Columbia and Puerto Rico that does not require the mandatory registration of investment advisers. This is true even if an adviser is not registered with the SEC. In other states, investment advising firms that continuously and regularly manage less than \$25m must register with the states in which they do business or have clients. Under the Dodd-Frank Act, investment advisers managing at least \$100m must register with the SEC unless they fit into an exception, such as the proposed family office rules. Wyoming has a blue sky law requiring the registration of anyone who offers or sells securities and prohibiting fraudulent securities practices, but does not have a state version of the SEC. As the SEC has noted, single-family trust companies pose a low risk of fraud because they do not compete with each other and most disputes can be addressed within the family.

MODERN TRUST LAWS

The past decade has seen fierce competition between states to become the optimal jurisdiction to create or relocate a trust. Top trust situs jurisdictions abolish or extend the Rule Against Perpetuities, have favorable tax and asset protection laws, provide flexible reformation and modification procedures, simplify trust migration, and permit directed trusts, special purpose entities, purpose trusts, and self-settled spendthrift trusts (also known as domestic asset protection trusts). A state like Wyoming offers all of these tools, providing unprecedented flexibility and control over trust assets. Among other advantages, Wyoming permits 1,000-year trusts; enables simplified modification, reformation, and migration procedures; provides heightened protection to LLC interests against creditors; permits the full range of modern trust innovations; and allows settlers to create their own spendthrift trusts.

Wyoming imposes no income tax on trust assets or capital gains, in addition to no individual or corporate income tax, gift tax, out-of-state retirement income tax, mineral ownership tax, or intangibles tax. In 2010, the US Census Bureau ranked Wyoming as having the second lowest state tax collections in the union.

Typically, to take advantage of such laws, a trust must establish requisite contacts with the forum state. To establish Wyoming as a situs, a Wyoming trust must designate Wyoming as its principal place of business. A Wyoming private trust company allows a trust to inexpensively establish such contacts by having a trustee that has its principal place of business in the state and having administration occur in the state. ■

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ABOVE ALL, PRIVATE TRUST COMPANIES PROVIDE FAMILIES WITH FLEXIBILITY

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they do not transact trust business, propose to act as a fiduciary for, or solicit trust company business from non-family members.

Choosing whether to take advantage of a regulated or unregulated private trust company depends on a family's specific needs. Advantages of an unregulated private trust company include fast and inexpensive creation and operation, no minimum capital investment, and easy changes to board members, officers, and structural provisions. Family members of a private trust company may avoid personal liability through the use of cutting-edge LLC statutes, such as the Wyoming Act. If a family would prefer to have regulatory oversight, Wyoming private trust companies can always voluntarily choose to be regulated.

In addition, Wyoming is the only US jurisdiction,