

Third Supplement to Memorandum 87-70

Subject: Study L-3010 - Corporate Trustees' Fees (Additional Information)

Attached to this supplement is additional information we have received in response to the survey regarding corporate trustees' fees. Exhibit 1 contains comments from attorneys received since the First Supplement to Memorandum 87-70 was prepared. Exhibit 2 contains comments from corporate trustees received since the Second Supplement to Memorandum 87-70 was prepared.

The remainder of this supplement contains additional analysis of the data we have received from corporate trustees, and updates data presented in the Second Supplement.

Percentage Fees

Table 1 (on the following page) shows the change in the ad valorem percentage fee applicable to the first bracket of securities value where the trustee has full management responsibility. The size of the first bracket, i.e., the amount to which the percentage applies, is disregarded in Table 1. (In 1982, first brackets ranged from \$250,000 to \$2,000,000 or were unlimited. In 1987, first brackets ranged from \$500,000 to \$3,000,000 or were unlimited.) Table 1 includes only those corporate trustees for which we have information from both years.

Table 1

Changes in First Bracket Percentage Rates
[Through #21, 09/11/87]

<u>ID#</u>	<u>1982 %</u>	<u>1987 %</u>	<u>% Change</u>
3	0.66	0.66	0%
1	0.75	0.75	0%
2	1.0	1.0	0%
9	1.0	1.0	0%
10	1.0	1.0	0%
16	1.0	1.0	0%
4	0.725	0.8	10.3%
11	0.75	0.875	16.7%
12	0.75	0.9	20.0%
13	0.9	1.1	22.2%
17	0.8	1.0	25.0%
18	0.8	1.0	25.0%
6	0.75	1.0	33.3%
21	0.75	1.0	33.3%
15	<u>0.8</u>	<u>1.15</u>	43.7%
AVG:	0.829	0.949	+ 14.5%
MED:	0.8	1.0	+ 25.0%
MODE:	0.75	1.0	+ 33.3%
		AVG % Change:	15.3%
		MED % Change:	16.7%
		MODE % Change:	0.0%

The overall magnitude of the increase in percentage fees can be judged by the averages at the end of Table 1. The first average figure (14.5%) is the percentage increase of the 1987 average rate over the 1982 average rate. The second average figure (15.3%) is the average of the percentage increases in the fourth column. Comparing median figures in 1982 and 1987, there was a 25% increase in fees. It should be remembered that fees may have increased by means of an increased minimum or an increase in the amount included in the bracket. Three out of the six trustees showing no increase in Table 1 used one or both of these methods to increase fees.

The information in Table 1 is displayed in graph form in Tables 2 and 3 which show the distribution of first bracket rates in 1982 and in 1987, respectively. The 1987 graph also shows the new corporate trustees which, as it turns out, have all adopted the 1% rate for their first brackets.

Table 2

First Bracket Percentage Fees - 1982

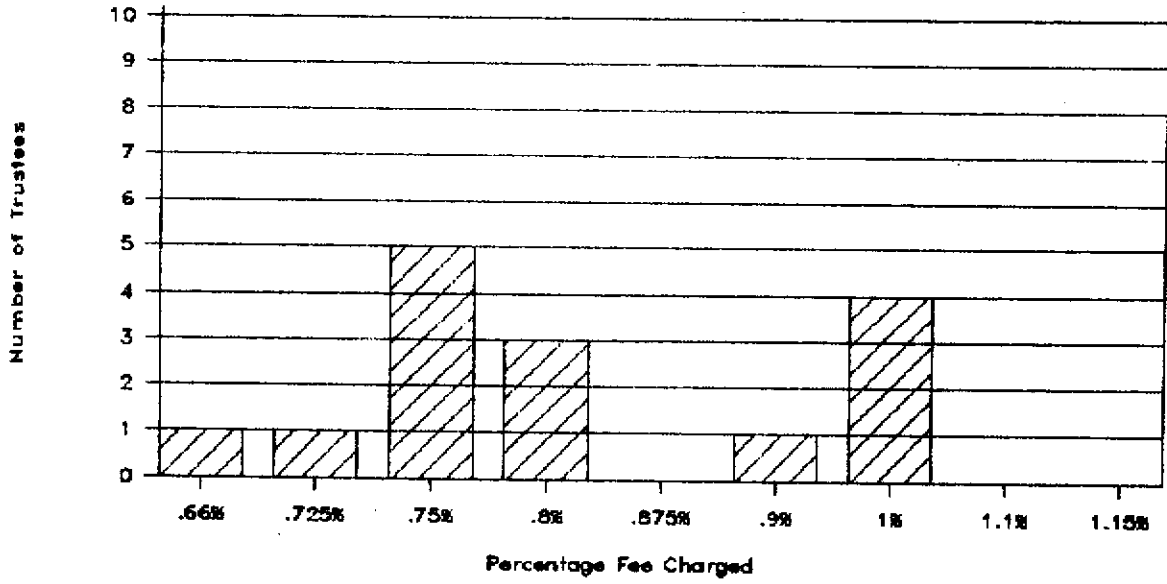
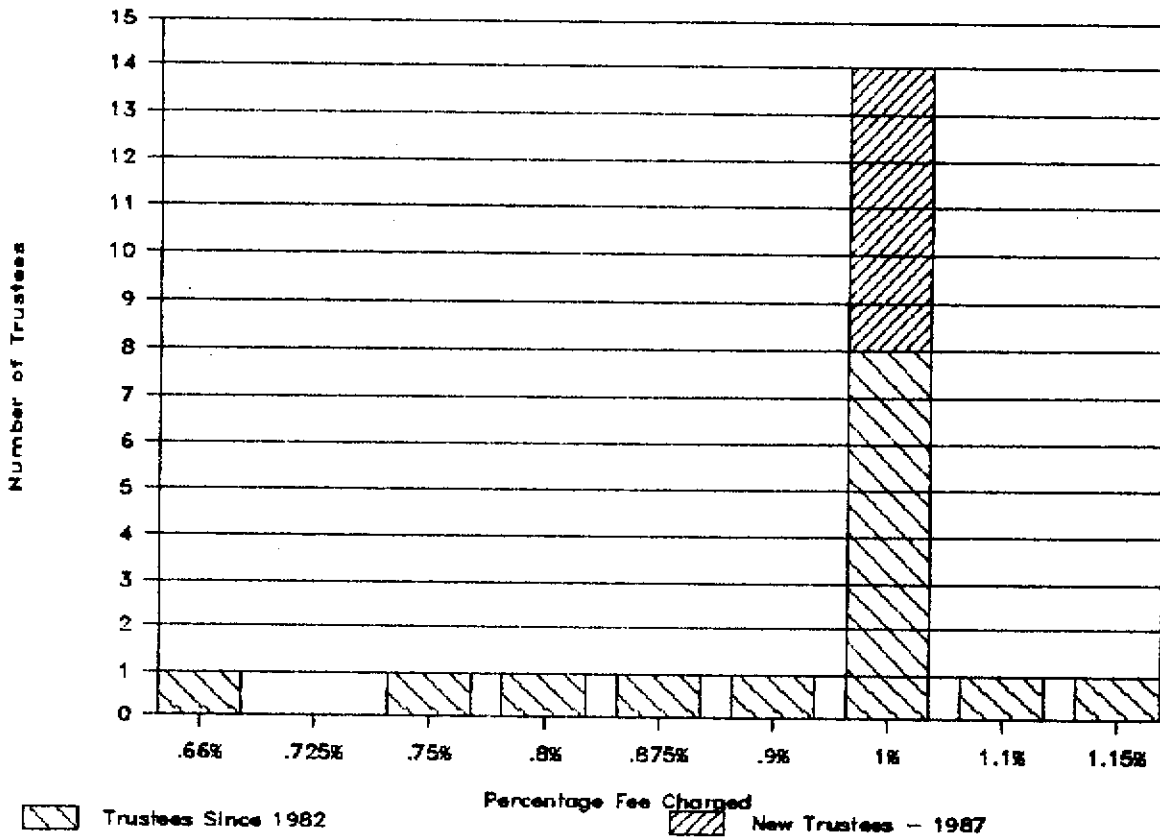


Table 3

First Bracket Percentage Fees - 1987



Tables 4 and 5 illustrate the average effect of changes in percentage fees for trusts of different sizes. As usual, these tables are based on the rates applicable to fully managed trusts consisting of securities. (Table 4 updates the table on page 3 of the Second Supplement to Memorandum 87-70.)

Table 4

Percentage Fee Changes (ignoring applicable minimum fees)
[Through #21, 09/11/87]

<u>Trust Amount</u>	<u>1982</u>	<u>1987</u>	<u>% Change</u>
\$50,000	\$414	\$476	15.0%
\$100,000	\$829	\$952	14.8%
\$200,000	\$1658	\$1903	14.8%
\$500,000	\$4103	\$4730	15.3%
\$1,000,000	\$7862	\$9176	16.7%
\$10,000,000*	\$52,840	\$53,646	1.5%

*\$10,000,000 trusts do not reflect "negotiable" rates.

Table 5

Percentage Fee Changes (with applicable minimum fees)
[Through #21, 09/11/87]

<u>Trust Amount</u>	<u>1982</u>	<u>1987</u>	<u>% Change</u>
\$50,000	\$1685	\$3126	85.5%
\$100,000	\$1750	\$3138	79.3%
\$200,000	\$2321	\$3412	47.0%
\$500,000	\$4537	\$5682	25.2%
\$1,000,000	\$7962	\$9890	24.2%
\$10,000,000*	\$52,840	\$53,646	1.5%

*\$10,000,000 trusts do not reflect "negotiable" rates.

The fourth column in Tables 4 and 5 indicates the impact of fee changes over the past five years on smaller trusts as compared to larger trusts. As shown by Table 5, the percentage change is quite dramatic for a small trust when the effects of minimum and percentage fee changes are considered. Table 4 yields an artificial result since in the smaller trusts the minimum fee supersedes the percentage fee that would otherwise apply. Table 4 does, however, illustrate the effect of the increases in percentage fees and the revisions made in bracket sizes for trusts of varying sizes.

Minimum Fees

Table 6 shows the change in minimum fees by corporate trustees for which we have 1982 and 1985 data. Again, these tables are based on the rates applicable to fully managed trusts consisting of securities. (Table 6 updates the table on page 4 of the Second Supplement to Memorandum 87-70; note that the "% Change" figure for trustee #4 in the earlier table was incorrect.)

Table 6

<u>Minimum Fee Changes</u>			
[Through #21, 09/11/87]			
<u>ID#</u>	<u>1982</u>	<u>1987</u>	<u>% Change</u>
4	\$1900	\$1200	-36.3%
1	\$750	\$750	0%
11	\$750	\$1000	33.3%
12	\$700	\$950	35.7%
16	\$2000	\$3500	75.0%
3	\$800	\$1500	87.5%
6	\$375	\$750	100.0%
2	\$500	\$1000	100.0%
17	\$750	\$1500	100.0%
18	\$1000	\$2000	100.0%
9	\$11,500	\$25,000	117.4%
10	\$1300	\$3000	130.8%
15	\$1200	\$3000	150.0%
21	\$750	\$2000	166.7%
13	\$1000	\$3000	200.0%
AVG:	\$1685	\$3343	→ 98.4%
MED:	\$800	\$1500	→ 87.5%
MODE:	\$750	\$3000	→ 300.0%
		AVG % Change:	90.6%
		MED % Change:	100.0%
		MODE % Change:	100.0%

The following averages eliminate the effect of trustee #9 whose minimum fees are very high:

AVG: \$984 \$1796 → 82.6%

The following averages include the six trustees for which we have 1987 data, but not 1982 data:

AVG: \$1685 \$3126 → 85.5%

The average minimum fee of the six corporate trustees for which we have only 1987 data is \$2583, and range from \$1500 to \$3500. As noted earlier, these corporate trustees set their first bracket percentage fees 1%. This data does not support the argument that companies entering into the market in recent years have a downward effect on fees. These six trustees have not challenged the trend in first bracket rates from .75% to 1% and their average minimum fees are 43.8% higher than the average minimum fees of the other trust companies (excluding the \$25,000 fee of trustee #9). We do not know whether our figures are representative, but assuming that trustees with high fees would tend to ignore our request for information more than trustees with low fees, then the situation is even worse than reflected by these figures. There is thus some doubt about whether the marketplace is the solution to the perceived problem of increased fees.

Respectfully submitted,

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Staff Counsel

Exhibit 1

COMMENTS OF ATTORNEYS RELATING TO CORPORATE TRUSTEES FEES

Note. The following comments are complete and in the form submitted, except that minor editorial changes have been made such as supplying punctuation, correcting spelling, and using unabbreviated words. This exhibit contains comments from 12 persons.

Respondents were not strict in segregating their answers to question 5 (comments on fee complaints) and question 7 (comments on possible legislation). Accordingly, the material here combines all comments. If a respondent submitted comments to both questions, the beginning of the response to question 7 is marked by ".". Remarks specifically directed toward legislative proposals are set out in italics.

267. If Trust Departments were receiving "reasonable fees" under court supervision, are the new fees unreasonable? Potential class action?

345. Most corporate trustee have limited their practice to larger estates. Comments I have received in past concern the poor investment strategies employed by corporate trustees rather than concern our excessive fees.

354. [A Superior Court judge writes:] In one word -- outrageous! Fees charged have no relation to the work done. Unsatisfactory explanations are given for charges. Usually the statements are "these are our standard charges." Unfortunately the lay person has no way of countering such statements. If the lay person goes to another corporate trustee, that person will discover the same, if not identical, charge with the same explanation. Many attorneys have told me, privately, how appalled they are at these charges. Unfortunately, they get business from these corporate trustees and cannot or will not criticize publicly.

•The worst legislation to occur in years was that which took away probate court supervision of trusts. There are several reasons for this, including the unsupervised gouging by corporate trustees in setting fees. Even with individual trustees, I have seen many instances of no accountings, funds lost or worse stolen, and assets wasted. Most of this could be prevented by requiring bonds and court supervision.

550. Because of high fees, constant turnover of trust personnel, and poor investment records, the great majority of my clients no longer use corporate trustees. Some still use corporate trustees from Eastern institutions, who seem to place more emphasis on stability in their trust department personnel.

•Why not go back to the old system of requiring court approval of all trustees fees of testamentary trusts?

Let trustee fees for living trusts be a contractual matter between

the trustor(s) and trustee.

Clients who use California corporate trustees are those who feel they have no other recourse, or for record keeping purposes only.

579. Their work is very superficial. Funds are usually lumped in with other funds. The trustees frequently are not professional in money management.

590. Often fees are charged on the "carry value" of assets that may be higher than actual market value. Scheduled rates have almost uniformly increased above the customary $3/4$ of 1% which court supervised trustees received when subject to court supervision.

705. In the 2 cases I heard, the objecting parties would have objected to any corporate fee at all. They wanted an individual trustee to act, citing the bank's fees, which were not out of line.

.I am concerned to preserve the testator's or grantor's intention to employ a corporate trustee. There are good reasons for that decision in most cases. *If the corporate trustee's fees are reasonable, they should not be taken into account by a court considering any petition to remove the trustee.*

790. Generally the fees are reasonable and trustors, beneficiaries and remaindermen do not complain. They do complain about the practice of some banks with court supervised trusts of transferring venue for supervision to some central county, ex parte, for easier computer accounting by the trustee.

.You should understand how Bank of the West computes fiduciary fees to understand why your phrase "increase fees" is ambiguous/meaningless.

Restoring the trust accounting rules, which had no mandatory account periods and no statutory fees, would be an improvement over the present system.

In my experience corporate trustees waste more by investing in their own common diversified trust funds or other bad investments than the overcharge in fees.

928. *Require corporate trustees to handle smaller estates (under \$200,000) for a statutory fee. The corporate trustees should be required to accept a specified numbers of smaller estates for a reasonable fee. The appointment would be by court on a rotating basis. Anyone who had a small estate could avail themselves of a corporate trustee by including specific statutory language in a testamentary instrument minimum estate would be 100,000.*

1140. We have worked with some corporate trustees who are willing to negotiate fees based upon a variety of factors. Others have fixed schedules which may not be altered.

1141. It is difficult to answer this question without knowing their overhead

1143. I think that they are too high and that they discourage the use of corporate trustees. I believe that representatives of the banks

know that this is the case. I believe major banks have made a conscious business decision that trust business is not profitable, particularly smaller trusts, and are curtailing or eliminating trust services.

I would permit trustors to change trustees whenever they want to whomever they want, even if the trust is irrevocable. Unless the trust agreement specifically forbids this.

I would permit beneficiaries by unanimous vote to change trustees to another corporation or to an individual other than themselves upon court approval unless the trust agreement specifically forbids this.

Exhibit 2

CORPORATE TRUSTEE FEE INFORMATION

Note. The information in this exhibit is keyed to the questions set out in the supplement to which this is attached. The full text of the relevant question as submitted to the corporate trustees is set out in the supplement.

Question #1. Percentage fees (on managed accounts, based on fair market value unless otherwise stated):

<u>ID #</u>	<u>Percentage fees in July 1982</u>	<u>Percentage fees in July 1987</u>
#20. Not in business		1% on first \$1,000,000 .75% on \$1,000,000-\$2,000,000 .5% over \$2,000,000
#21. <u>Living trusts:</u>		1% on first \$1,000,000 .75% on \$1,000,000-\$2,000,000 .6% on \$2,000,000-\$3,000,000 .5% on \$3,000,000-\$4,000,000 .3% over \$4,000,000
		<u>Common trust funds:</u> 10% discount on above
	<u>Testamentary trusts:</u> .75% on first \$500,000 Negotiable over \$500,000	<u>Real property:</u> 1% on income property; negotiable on vacant residential
	<u>Real property:</u> .75% on first \$500,000 Negotiable over \$500,000	
	<u>Common trust funds:</u> .7% on first \$300,000 .5% on \$300,000-\$500,000 .4% over \$500,000	

Question #2. Minimum annual fees (fully managed unless otherwise indicated):

<u>ID #</u>	<u>Minimum fees in July 1982</u>	<u>Minimum fees in July 1987</u>
#20. Not in business		\$2500
#21. \$750		\$2000
	\$500 for common trust fund	\$1200 for common trust fund

Question #3. Negotiability:

#20. "Standard fee schedules are subject to negotiation on individual accounts. We take into consideration size of the account and the existing relationship of the client with [the institution]."

Question #4. Percentage of accounts under or over standard schedule:

<u>ID #</u>	<u>Under standard fees</u>	<u>Over standard fees</u>
#20.	"N/A due to newness of Trust Department"	"N/A due to newness of Trust Department"
#21.	Estimate 15%-20%	None

Question #5. Additional fees for extraordinary services:

#20. Institution "charges additional fees for extraordinary services. Balance of question does not apply."

#21. Institution "does charge additional fees for extraordinary services. Approximately 85% to 90% of accounts are charged an extraordinary fee for tax service in preparation and filing of fiduciary tax reports. Putting aside this fee, I have insufficient data to comfortably support any estimate of what percentage of the accounts were charged an additional fee in 1986. The areas developing extraordinary fees generally fall in those accounts holding real estate requiring special services. With this premise in mind, I would suggest that percentage would be less than 20%.

"Typical extraordinary services include:

- a. Real estate sales and leases.
- b. Major remodeling, fire damages settlement, unlawful detainer, etc.
- c. Litigation.
- d. Death tax services.

Question #6. What percentage extraordinary over standard:

#20. "We do charge extraordinary fees, although no extraordinary fees have yet been charged."

#21. "I am unable to gather adequate, reliable data to support any estimates of what average percentage by which extraordinary fees actually charged exceed the applicable or minimum basic percentage fees. The average \$250.00 to \$275.00 tax service fee is certainly less than the ongoing management fee, so this leaves again, real estate extraordinary fees, most of which are for sales and leases which would leave the percentage figure you request at a very low number."

Question #7. Sweep fees:

#20. "No sweep fee is charged, although one is under consideration."

#21. Institution "does not charge sweep fees."

Question #8. Common trust funds:

#20. Institution "offers several mutual fund families. We currently do not have a separate schedule for those funds."

#21. Institution "does offer and manages its own common trust funds for investment of trust accounts. See breakdown under question No. 1, i. e., 10% discount from ordinary fee schedule."

Question #9. Reason for any increase since 1982:

"A compelling reason for raising fees since July 1, 1982 is to offset raising costs of doing business, i.e., salaries, office supplies, computer hardware, computer systems, rent, insurance, etc. An additional consideration for adjustment of fees is the recognition of increasing business risk. This addresses the increased litigious propensity of the public in general, couples with the added proclivity of the courts and juries to award damages (actual and punitive) predictably well in excess of what would have been reasonable in 1982."

Question #10. Other comments:

Institution "has never refused to resign a trust position where it can be shown that the benefit or purpose of management services are outweighed by the size of our fee. Nor will [institution] remain as a fiduciary on an account where the majority (or only) beneficiary seeks our resignation in favor of a qualified (usually confined to corporate), competent successor. I suggest this philosophy is followed by far and again the majority of corporate trustees.

"Asset management has become highly competitive with investment managers, financial planners, CPA's, brokers, insurance companies and even retail stores all offering management services with competitive fee structures.

"Before considering governmental controls, it would seem appropriate to compare these 'voluntary' fees with corporate trustee fees, after adding for the trustee's service and cost of:

- a. Custody of assets.
- b. Transaction reporting and asset accounting.
- c. Fiduciary risk.
- d. Services agreed upon within the trust document.

"Legislative or judicial control of fees, direct or indirect, will serve to generate mediocre service and investment performance -- the last result this commission should wish to recommend."

Set-up and Wind-up Charges:

<u>ID #</u>	<u>Set-up charges</u>	<u>Wind-up charges</u>
#21.	\$100 plus \$20 per security and \$100 per real estate, loans, mineral interests	\$500 plus per recipient, \$20 for securities and \$100 per real estate, loans, mineral interests

Miscellaneous Information:

#21. "All fees are based on fair market value of assets in each trust account. As do most major trust institutions, [institution] uses a pricing service for valuing security holdings. Our in-house real estate division appraises real property holdings at least annually for fee purposes. If the property is unique we may insist on an outside professional appraisal."