

**“10 Red Flags:  
What to watch for when Reviewing  
Investments as a Fiduciary”**



Stetson Law National Conference – St. Petersburg, FL      October 14<sup>th</sup>, 2020

<p>Darryl J. Lynch, AIF® Managing Director – Investments 500 108th Avenue NE, Suite 2100 Bellevue, WA 98004 // P: (425) 709-0404</p>	<p>Peter C. Palumbo, AIF® Director - Investments One N. Brentwood Blvd, Suite 600 St. Louis, MO 63105 // P: (314) 854-3722</p>
--	--

---

---

---

---

---

---

---

---

---

---

---

---

**Today's Topics**

<p><b>“10 Red Flags: What to Watch for in Reviews”</b></p> <p><i>Presented by:</i> Darryl J. Lynch, AIF® Managing Director – Investments</p> <p>Peter C. Palumbo, AIF® Director – Investments</p> <p><i>2020 National Conference on Special Needs Planning and Special Needs Trusts</i></p> <p>October 14<sup>th</sup>, 2020</p>	<ul style="list-style-type: none"> <li>➤ Delegation</li> <li>➤ Where &amp; When You'll See Red Flags</li> <li>➤ The 10 Red Flags</li> <li>➤ What to Do if You See a Red Flag</li> <li>➤ Suitability: Evaluating Client Needs</li> <li>➤ <span style="border: 1px solid black; padding: 1px;">Deciding to Invest</span></li> <li>➤ Diversification &amp; Risk</li> <li>➤ Investment Policy Statements</li> <li>➤ Investment Proposals</li> <li>➤ Allocation Models</li> <li>➤ Audience Q&amp;A</li> </ul>
--	--

---

---

---

---

---

---

---


---

---

---

---

---



**Delegation**

---

*“Delegation. For a fiduciary without substantial investment expertise, it is both a good plan and protective against liability, to select an investment advisor.”*

Source: National Guardianship Association

---

*“The prudent investor rule is a test of conduct and not of resulting performance.”*

(760 ILCS 5/5) (from Ch. 17, para 1675)

---

---

---

---

---

---

---

---

---

---

---

---

### Where & When You'll See Red Flags

- **When to Watch:**
  - Inventory of assets
  - Quarterly & year-end reviews
  - Annual reporting
- **Where to Watch:**
  - Account monthly statements
    - Activities
    - Holdings
    - Front page for fees

---

---

---

---

---

---

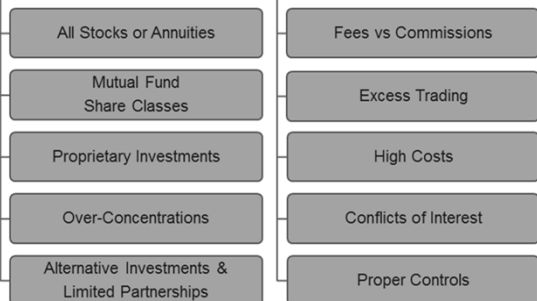
---

---

---

---

### 10 Red Flags: What to Watch for in Reviews




---

---

---

---

---

---

---

---

---

---

### Red Flag #1: All Stocks or Annuities

- Individual **stocks** may carry significant risk
  - Market / Systemic Risk
  - Firm / Company Risk
  - Degrees of risk may vary, but no stock is immune
- **Annuities** may lack necessary liquidity
  - Creates difficulties in accessing funds
  - Assets may be "locked up" for many years
  - Liquidation penalties and surrender charges are common
  - High internal costs

---

---

---

---

---

---

---

---

---

---

Red Flag #2: Mutual Fund Share Classes

- The class determines the costs and fee structure
- What are the differences between share classes?
  - **A Shares:** Front-end fees, lower expenses
  - **B Shares:** No front-end fees, back-end fees, higher expenses; convert to A shares after a period
  - **C Shares:** No front-end fees, small back-end fees, high expense ratios, no conversions or discounts
  - **I Shares:** No front- / back-end fees, low internal fees/expenses
- Index Funds
- Active vs Passive Management

---

---

---

---

---

---

---

---

Red Flag #3: Proprietary Investments

- Investment products created/sold by Advisor's firm
  - These are often mutual fund or annuity products
  - Advisor may be incentivized to push proprietary products
  - May create a conflict of interest
- Portfolios invested heavily in a firm's proprietary investments are a notable Red Flag

---

---

---

---

---

---

---

---

Red Flag #4: Over-Concentrations

- A large percentage or entire portfolio consisting of:
  - CDs – Inflation Risk
  - Single stock holdings – Market Risk
  - One asset class - For example:
    - All Growth Funds
    - All Tech Funds / FANG Stocks
    - All Oil-based Investments

---

---

---

---

---

---

---

---

### Red Flag #5: Alternative Investments & Limited Partnerships

- Low or No Liquidity
- High up-front costs
- High internal fees
- Can be a “black box”
- K-1 tax reporting
- Difficult and costly to re-register or terminate
- Hedge Funds

---

---

---

---

---

---

---

---

### Red Flag #6: Fees vs Commissions

- Fees allow you to know the cost of management
  - Usually charged as a flat rate – a percentage of assets
  - Compare rates between advisors and programs
- Commissions can be variable and may create conflicts of interest
  - Total fees assessed may depend on several factors
  - Incentivizes more transactions, not necessarily more care

---

---

---

---

---

---

---

---

### Red Flag #7: Excess Trading

- Increases accounting and record-keeping costs
- Possible conflict of interest in commission accounts
- Churning
- Over Re-balancing

---

---

---

---

---

---

---

---

### Red Flag #8: High Costs

---

- What are the fees?
- Fees can be as high as 3%
- Gold Standard: 1% or less for asset management
- In a commission account, the total fees assessed should still be 1% or less overall

---

---

---

---

---

---

---

---

### Red Flag #9: Conflicts of Interest

---

- Personal bias
- Commission accounts
- Proprietary investments
- Self-dealing

---

---

---

---

---

---

---

---

### Red Flag #10: Proper Controls

---

- Investment models & regular account rebalancing
- Standardized, objective method for assessing risk, determining models, and evaluating performance
- Ongoing processes to monitor and review accounts
- Clear procedures in place to document the above
- Transparency in communications, reporting, and disclosures (especially regarding costs and fees)
- Information security & document retention policies

---

---

---

---

---

---

---

---

### What to Do if You See a Red Flag: Take Action

- Ask for clear and transparent reports
- Ask for a second opinion
- Look for clear fiduciary standards
- Examine the processes and procedures in place
- Delegate: Work with a Fiduciary

---

---

---

---

---

---

---

---

### Suitability: Evaluating Client Needs

- Time Horizon
- Age & Health Evaluation
- Sources of Income and Total Investable Assets
- Annual Expenses (Individual & Guardianship)
- What is the short fall, if any?
- Anticipated large withdrawals? (i.e., education)
- Additional income from other sources?
- Limitations or restrictions on investments?

---

---

---

---

---

---

---

---

### Deciding to Invest or Leave in Cash

- Use objective standards & logical decision-making
- Tools to determine suitable investment options
  - Standardized questionnaire
  - Objective scoring system
  - Quantifiable risk categories
  - Data-driven investment models
- Ask common sense questions
  - "How does this meet the beneficiaries' needs / goals?"
  - "Is this the right level of risk / time-frame for the client?"
  - "Is this better than any available alternatives? Why?"

---

---

---

---

---

---

---

---

**OPPENHEIMER**

## INVESTMENT PROFILE QUESTIONNAIRE

Sample Investment Profile Questionnaire

Client's Age: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_  
 Proposed Model: \_\_\_\_\_  
 Monthly Withdrawal: \_\_\_\_\_  
 Budget %: \_\_\_\_\_

1. What is the overall purpose of the account? (Does not include maintenance or personal property)

<input checked="" type="checkbox"/> a) To accumulate funds for a goal	<input type="checkbox"/> b) To provide a regular income
<input type="checkbox"/> c) To provide liquidity for a goal	<input type="checkbox"/> d) To provide liquidity for a goal
<input type="checkbox"/> e) To provide liquidity for a goal	<input type="checkbox"/> f) To provide liquidity for a goal
<input type="checkbox"/> g) To provide liquidity for a goal	<input type="checkbox"/> h) To provide liquidity for a goal

2. When do you anticipate that you will need the funds?

<input checked="" type="checkbox"/> a) Less than 1 year	<input type="checkbox"/> b) 1-2 years
<input type="checkbox"/> c) 3-5 years	<input type="checkbox"/> d) 6-10 years
<input type="checkbox"/> e) 11-20 years	<input type="checkbox"/> f) 21+ years

3. If any lump sum distributions are expected in the next 5 years, what is the approximate percentage of the current account value?

<input type="checkbox"/> a) No lump sum distributions are expected	<input type="checkbox"/> b) 0-10%
<input type="checkbox"/> c) 11-20%	<input type="checkbox"/> d) 21-30%
<input type="checkbox"/> e) 31-40%	<input type="checkbox"/> f) 41-50%
<input type="checkbox"/> g) 51-60%	<input type="checkbox"/> h) 61-70%
<input type="checkbox"/> i) 71-80%	<input type="checkbox"/> j) 81-90%
<input type="checkbox"/> k) 91-100%	<input type="checkbox"/> l) Other

4. During the next 5 years, are there any other major expenses that you expect to incur?

<input checked="" type="checkbox"/> a) No other major expenses are expected	<input type="checkbox"/> b) Yes, other major expenses are expected
<input type="checkbox"/> c) Yes, other major expenses are expected	<input type="checkbox"/> d) Yes, other major expenses are expected
<input type="checkbox"/> e) Yes, other major expenses are expected	<input type="checkbox"/> f) Yes, other major expenses are expected
<input type="checkbox"/> g) Yes, other major expenses are expected	<input type="checkbox"/> h) Yes, other major expenses are expected

5. During the next 5 years, what percentage of the current account value do you expect to be covered by income that exceeds the portfolio's withdrawal rate?

<input type="checkbox"/> a) 0%	<input type="checkbox"/> b) 1-10%
<input type="checkbox"/> c) 11-20%	<input type="checkbox"/> d) 21-30%
<input type="checkbox"/> e) 31-40%	<input type="checkbox"/> f) 41-50%
<input type="checkbox"/> g) 51-60%	<input type="checkbox"/> h) 61-70%
<input type="checkbox"/> i) 71-80%	<input type="checkbox"/> j) 81-90%
<input type="checkbox"/> k) 91-100%	<input type="checkbox"/> l) Other

6. If you expect to use the account for a goal, when will you need the funds?

<input type="checkbox"/> a) Less than 1 year	<input type="checkbox"/> b) 1-2 years
<input type="checkbox"/> c) 3-5 years	<input type="checkbox"/> d) 6-10 years
<input type="checkbox"/> e) 11-20 years	<input type="checkbox"/> f) 21+ years

7. If you expect to use the account for a goal, what is the approximate percentage of the current account value that you expect to need for the goal?

<input type="checkbox"/> a) 0-10%	<input type="checkbox"/> b) 11-20%
<input type="checkbox"/> c) 21-30%	<input type="checkbox"/> d) 31-40%
<input type="checkbox"/> e) 41-50%	<input type="checkbox"/> f) 51-60%
<input type="checkbox"/> g) 61-70%	<input type="checkbox"/> h) 71-80%
<input type="checkbox"/> i) 81-90%	<input type="checkbox"/> j) 91-100%
<input type="checkbox"/> k) Other	<input type="checkbox"/> l) Other

8. During the next year, what percentage of the current account value do you anticipate not withdrawing represents?

<input type="checkbox"/> a) 0-10%	<input type="checkbox"/> b) 11-20%
<input type="checkbox"/> c) 21-30%	<input type="checkbox"/> d) 31-40%
<input type="checkbox"/> e) 41-50%	<input type="checkbox"/> f) 51-60%
<input type="checkbox"/> g) 61-70%	<input type="checkbox"/> h) 71-80%
<input type="checkbox"/> i) 81-90%	<input type="checkbox"/> j) 91-100%
<input type="checkbox"/> k) Other	<input type="checkbox"/> l) Other

9. What is the account goal?

<input type="checkbox"/> a) To accumulate funds for a goal	<input type="checkbox"/> b) To provide a regular income
<input type="checkbox"/> c) To provide liquidity for a goal	<input type="checkbox"/> d) To provide liquidity for a goal
<input type="checkbox"/> e) To provide liquidity for a goal	<input type="checkbox"/> f) To provide liquidity for a goal
<input type="checkbox"/> g) To provide liquidity for a goal	<input type="checkbox"/> h) To provide liquidity for a goal

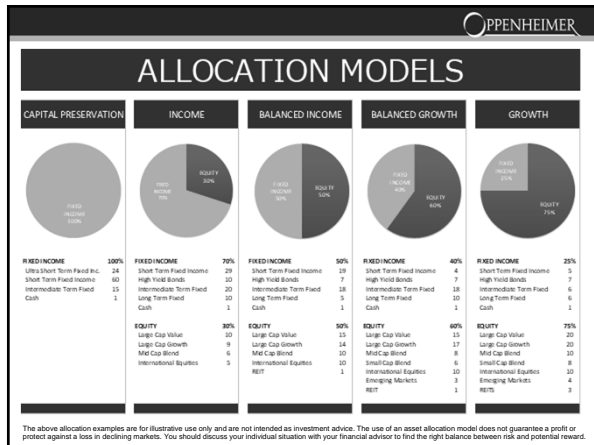
10. Based on your spending and with a 2% return on investments, how long will the account last?

<input type="checkbox"/> a) Less than 1 year	<input type="checkbox"/> b) 1-2 years
<input type="checkbox"/> c) 3-5 years	<input type="checkbox"/> d) 6-10 years
<input type="checkbox"/> e) 11-20 years	<input type="checkbox"/> f) 21+ years

**TOTAL SCORE: 36**

**TOTAL SCORE: 43**

APPROVAL SIGNATURE: \_\_\_\_\_  
DATE: \_\_\_\_\_



**OPPENHEIMER**

## Quick Facts: Allocation Models

Regarding Oppenheimer & Co. Inc. models for Conservatorships:

- Most clients fall within a few models
- Our models ensure proper diversification among asset classes
- Optimized numbers of securities minimize accounting costs
- Fees for models are kept low by utilizing
  - Low cost index funds, and
  - Actively managed, no-load mutual funds

The use of an asset allocation model does not guarantee a profit or protect against a loss in declining markets. You should discuss your individual situation with your investment professional to find the right balance between risk and potential reward.

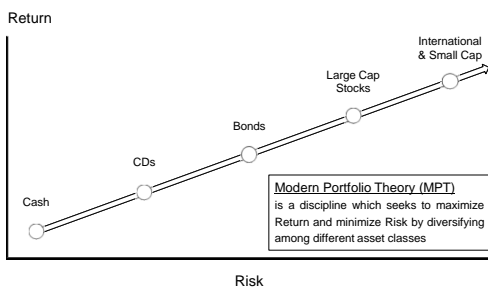
# Importance of Diversification

2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Small Cap Growth 24.0%	Long Term Bonds 22.49%	Emerging Markets 9.1%	Small Cap Growth 41.56%	Real Estate 20.01%	Large Cap Growth 24.9%	Small Cap Value 31.7%	Emerging Markets 9.5%	High Yield Bonds 4.2%	Large Cap Growth 26.3%
Real Estate 28.6%	Real Estate 8.2%	Small Cap Value 18.6%	Small Cap Value 34.52%	Long Term Bonds 16.3%	Real Estate 2.0%	High Yield Bonds 14.4%	Large Cap Growth 20.21%	Cash 1.0%	Real Estate 28.6%
Small Cap Value 24.52%	Short Term Bond 6.2%	Real Estate 17.5%	Large Cap Growth 33.46%	Large Cap Growth 14.8%	Biotech 0.5%	Large Cap Value 17.4%	International Stock 25.42%	Short Term Bonds 1.5%	Small Cap Growth 28.4%
Emerging Markets 19.2%	Int'l Term Bond 5.8%	Large Cap Value 17.53%	Large Cap Value 32.53%	Large Cap Value 12.3%	Short Term Bonds 0.4%	Natural Resources 11.7%	Small Cap Growth 22.1%	Int'l Term Bond 6.0%	Large Cap Value 26.34%
Natural Resources 14.83%	Large Cap Growth 4.8%	International Stock 17.2%	International Stock 21.0%	Small Cap Growth 14.6%	Cash 0.2%	Emerging Markets 11.4%	Large Cap Value 13.4%	Foreign Bonds 1.2%	Long Term Bonds 21.3%
Large Cap Growth 16.71%	High Yield Bonds 4.3%	High Yield Bonds 15.5%	High Yield Bonds 7.42%	Small Cap Value 4.22%	International Stock 0.3%	Small Cap Growth 11.2%	Long Term Bonds 12.21%	Real Estate 4.04%	Small Cap Value 22.3%
Large Cap Value 15.1%	Foreign Bonds 0.8%	Large Cap Growth 19.2%	Real Estate 2.3%	Int'l Term Bond 3.1%	Small Cap Growth 3.3%	Long Term Bonds 10.2%	Foreign Bonds 13.3%	Long Term Bonds 4.3%	International Stock 22.0%
High Yield Bonds 15.1%	Cash 0.0%	Small Cap Growth 14.5%	Short Term Bonds 0.34%	High Yield Bonds 2.5%	Foreign Bonds -1.1%	Real Estate 8.5%	Small Cap Value 7.94%	Large Cap Value 8.2%	Emerging Markets 16.42%
Long Term Bonds 19.1%	Large Cap Value 0.4%	Int'l Term Bond 4.2%	Cash 0.8%	Short Term Bonds 0.62%	Long Term Bonds 3.3%	Large Cap Growth 10.2%	High Yield Bonds 3.4%	Large Cap Growth 9.3%	High Yield Bonds 14.4%
International Stock 7.5%	Small Cap Growth 2.91%	Long Term Bonds 3.5%	Int'l Term Bonds -2.02%	Cash 0.0%	Large Cap Value -3.8%	Int'l Term Bond 2.65%	Real Estate 5.2%	Small Cap Growth 9.3%	Natural Resources 7.7%
Foreign Bonds 6.1%	Small Cap Value 5.0%	Natural Resources 2.7%	Emerging Markets -2.7%	Emerging Markets 1.0%	High Yield Bonds 4.4%	Foreign Bonds 1.6%	Int'l Term Bond 2.1%	Natural Resources 11.2%	Foreign Bonds 6.4%
Int'l Term Bond 6.54%	International Stock 11.37%	Short Term Bonds 0.44%	Short Term Bonds -2.6%	Foreign Bonds 2.4%	Small Cap Value 7.47%	International Stock 1.5%	Natural Resources 1.9%	Small Cap Value 12.8%	Int'l Term Bond 6.8%
Short Term Bond 2.9%	Natural Resources -13.3%	Foreign Bonds 0.0%	Long Term Bonds -8.87%	Natural Resources 4.4%	Emerging Markets 16.0%	Short Term Bonds 0.8%	Cash 0.8%	International Stock 13.7%	Short Term Bonds 2.9%
Cash 0.1%	Emerging Markets -15.1%	Cash 0.0%	Natural Resources -9.52%	Natural Resources 17.01%	Natural Resources -24.6%	Cash 0.7%	Short Term Bonds 6.42%	Emerging Markets 14.3%	Cash 2.2%

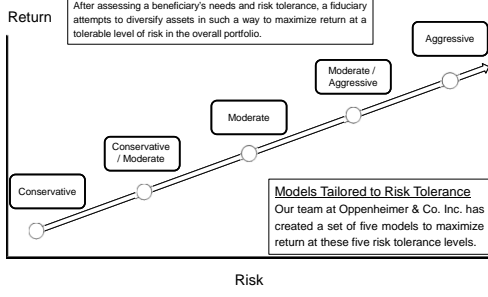
This information (including, but not limited to, prices, quotes and statistics) has been obtained from sources we believe to be reliable, but we do not represent that it is accurate or complete, and it should not be relied upon as such. Market prices and other information are subject to change without notice.



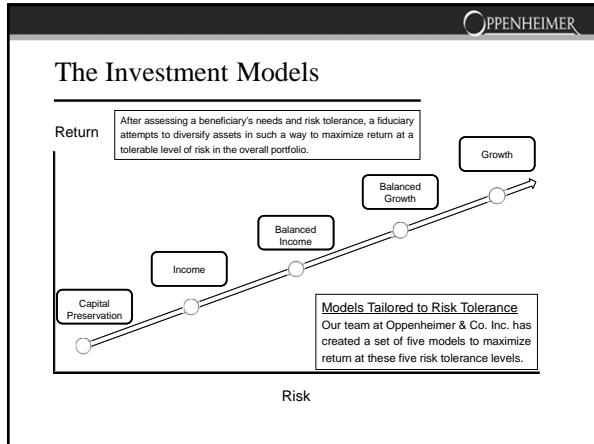
## Balancing Risk & Return



## The Investor Profile








---

---

---

---

---

---

---

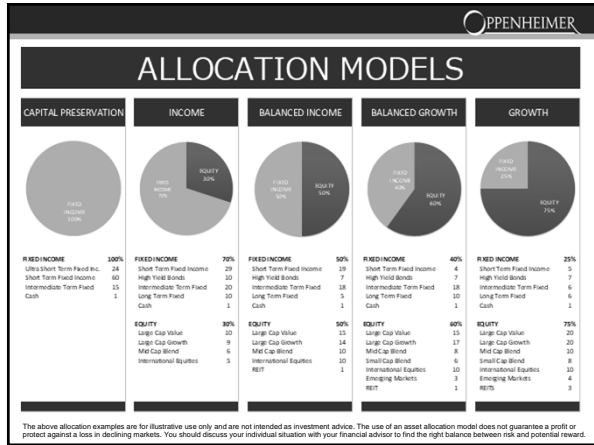
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

---

---

- Investment Policy Statements & Proposals**
- Investment Allocation Model
    - Capital Preservation, Income, Balanced Income, Balanced Growth, & Growth
  - Investment Selection & Future Considerations
  - Investment Time Horizon
  - Rebalancing Frequency
  - Annual Costs
  - Court Blocking or Restriction Requirements
  - Adoption Agreements signed by Guardian & FA

---

---

---

---

---

---

---

---

---

---

---

---

## Investment Proposal Summary

### Sample Special Needs Trust

Account Name	Special Needs Trust
Total Investable Assets	\$500,000
Type of Account	Trust
Monthly Withdrawal	N/A
Time Horizon	2 - 5 years
Risk Tolerance	Conservative - Moderate
Allocation Model	Income
Benchmark Model	70% Barclays Aggregate Bond Index / 30% S&P
Rebalancing Frequency	Semi-Annual
Blocked / Restrictions	n/a
Performance Reporting	Quarterly in Person Reviews

Oppenheimer & Co. Inc. Conservatorship accounts have the following costs and benefits:

- Oppenheimer's Annual Management Fee is 0.90%
- We provide opportunities for increased income for the client through proper asset allocation
- Oppenheimer holds approximately 9 – 12 securities in the portfolio, reducing annual accounting costs
- Each Oppenheimer model maintains proper diversification & receives regular rebalancing
- Provide standardized performance reports quarterly
- Ongoing monitoring & risk evaluation to keep in compliance with the Uniform Prudent Investor Act (UPIA)

This proposal is for illustration purposes only and is not a representative of the performance of any specific investment, and there is no guarantee that the hypothetical rate of return can be achieved.

---

---

---

---

---

---

---

---

---

---

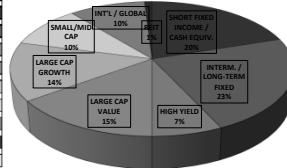
---

---

## Investment Proposal Summary

In assessing a beneficiary's needs, goals, and risk tolerance, we determine the most suitable investment model. Each model diversifies investments and manages the beneficiary's risks. Here is a top-level look at the diversity of investments in our Balanced Income model:

Balanced Income Model		
SHORT TERM FIXED INCOME / CASH EQUIV.	28%	\$140,000
INTERMEDIATE / LONG-TERM FIXED	25%	\$125,000
HIGH YIELD	7%	\$35,000
LARGE CAP VALUE	15%	\$75,000
LARGE CAP GROWTH	14%	\$70,000
SMALL CAP	10%	\$50,000
INTL. / GLOBAL EQUITY	10%	\$50,000
REIT	1%	\$5,000
<b>Total Portfolio: 100% \$500,000</b>		



This proposal is for illustration purposes only and is not a representative of the performance of any specific investment. There is no guarantee that the hypothetical rate of return can be achieved. Diversification does not guarantee a profit nor guarantee protection against a loss.

---

---

---

---

---

---

---

---

---

---

---

---

## Monitoring Accounts

- Performing regular reviews with your delegated Advisors are:
  - A fiduciary responsibility
  - An important tool
  - A best practice
- A fiduciary advisor should assist you on an ongoing basis with:
  - Periodic due-diligence and Suitability Reviews
  - Documentation
- Your advisor may provide standardized documentation

Advisory Account Portfolio Review Log	
Client Information	rev 2/18
Client Name	Darryl J. Lynch & Peter C. Palumbo
Client Address	South Bellevue, WA 98148, Lynn, MO
Client Phone	206-274-1234
Client Email	dlynch@lynchpalumbo.com
Client Birthdate	10/10/2019
Client Signature	<i>Darryl J. Lynch</i>
Advisor	Darryl Lynch & Peter Palumbo of Oppenheimer, Joe B. Conservator, CEO of PING
Advisor ID	071000000
Advisor Type	Guardianship
Advisor Model	Balanced Income
Advisor Fee	0.90%
Advisor Status	Yes
Investment Objectives	<input type="checkbox"/> Economy in general <input type="checkbox"/> Specific securities in portfolio <input type="checkbox"/> Direction of financial markets <input type="checkbox"/> Short term outlook / recommendations <input type="checkbox"/> Investment objectives <input type="checkbox"/> Long term outlook / recommendations <input type="checkbox"/> Risk tolerance <input type="checkbox"/> Changes in personal / financial profile <input type="checkbox"/> Change in assets <input type="checkbox"/> Performance of the account
Investment of the Portfolio	FY19 TYD performance: Portfolio is up +X.YYZ%
Investment of the Portfolio	Due to large gains in ABC fund, the account automatically re-balanced to the model at end of Q4
Investment of the Portfolio	Note at this time: Account diversified according to 2019 Balanced Income model standards.
Investment of the Portfolio	Darryl J. Lynch, CEO Managing Director - Investments Oppenheimer & Co. Inc. 1000 158th Avenue NE Suite 2100 Bellevue, WA 98004 425.779.1000 dlynch@lynchpalumbo.com
Investment of the Portfolio	Joe B. Conservator 10/10/2019 Date of Review
Investment of the Portfolio	Darryl J. Lynch 10/10/2019 Date of Review

---

---

---

---

---

---

---

---

---

---

---

---

### Contact Information

**Darryl J. Lynch, AIF®**

Managing Director – Investments  
425-709-0404 Phone  
425-709-0410 Fax  
800-531-3110 Toll Free  
[darryl.lynch@opco.com](mailto:darryl.lynch@opco.com)

**Peter C. Palumbo, AIF®**

Director – Investments  
314-854-3722 Phone  
314-863-1809 Fax  
800-782-6217 Toll Free  
[peter.palumbo@opco.com](mailto:peter.palumbo@opco.com)

**Oppenheimer & Co. Inc.**

500 108th Ave NE, Suite 2100  
Bellevue, WA 98004

---

---

---

---

---

---

---

---

### IMPORTANT INFORMATION

This presentation is intended for informational purposes only and is subject to change without notice.

For further information about the products/programs available and their suitability for your portfolio, please contact your Oppenheimer Financial Advisor. Any discussion of securities, should not be construed as a recommendation or an offer or solicitation to buy or sell interest in any securities.

Oppenheimer & Co. Inc. does not provide legal or tax advice.

© 2019 Oppenheimer & Co. Inc. Transacts Business on All Principal Exchanges and Member SIPC. All rights reserved. No part of this presentation may be reproduced in any manner without written permission of Oppenheimer.

Presentation approved: 07/25/2019 (Tracking #: 2649857.1)

---

---

---

---

---

---

---

---