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**Schultz Collins 4th Quarter 2021 Market Review[1] and Commentary**

Many stock markets rebounded in the 4th quarter, ending the year in positive territory. The gains came despite the advent of the Omicron variant disrupting holiday plans, renewed supply chain worries, and mounting concerns about inflation. Developed markets showed confidence in economic recovery, even amidst reinstatement of restrictions to slow the spread of covid. Emerging markets, however, had a more difficult quarter, and are down, both for the quarter and the year.

The aggregate global stock market, as measured by the MSCI All Country World Index, rose 6.77% over the quarter and ended the year up 19.05%. Much of the gains can be attributed to the performance of the US stock market, which makes up roughly 60% of the All Country World Index.

US large cap stocks, as proxied by the S&P 500 index, rallied in the 4th quarter with a return of 11.03%. The index is up 28.73% in 2021. The Russell 2000 index of small US companies underperformed relative to large companies, but they still provided gains. Small companies are up 2.14% for the quarter and 14.83% for the year.

US real estate, as benchmarked by the Dow Jones US Select Real Estate Investment Trust index, outperformed stocks, and is up 17.22% for the 4th quarter. US real estate ended the year up 45.95%.

International stock markets have lagged US markets during the first three quarters of the year, and the 4th quarter was no different. The MSCI Europe, Australasia and Far East index of international developed stock markets is up 2.74% for the 4th quarter and up 11.78% for the year. International emerging markets, however, are down 1.24% for the quarter and down 2.22% for the year.

2021 was a difficult year for bond holders. The aggregate of US government and corporate bonds were flat for the 4th quarter and ended the year down 1.54%. The intermediate-term corporate portion of the US bond market was down about a half a percent for the quarter and down 1% for the year. Global bonds fared worse. The FTSE World Government Bond Index ended the quarter down 1.1% and down nearly 7% for the year.

With concerns that the rise in inflation is no longer transitory, The Fed signaled that they may tighten monetary policy, which pushed up yields in October. Yields fell in November and December, and the yield on the 10-year treasury remained unchanged from the past quarter. It sits at 1.52% as of the end of the year.

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[1] Data provided by Morningstar and Dimensional Fund Advisor. Data is for illustrative purpose only.

Even with the backdrop of headline events such as the highest inflation readings in a decade, the capitol riot, the new coronavirus variants, etcetera, 2021 provided many stockholders with positive gains. Captivating news stories may cause concern, but it's hard to separate the signal from the noise, and even harder to capitalize on them. A well-diversified portfolio protects against idiosyncratic risk and tends to reward investors for taking on systematic risk.

We'd like to address the question, "Can You Trust Your Fiduciary?" Over the last 20+ years, Patrick Collins, Principal Emeritus at Schultz Collins, has provided litigation on many cases alleging a breach of fiduciary duties. He's been nominated five times to the national faculty of the American Law Association American Bar Association course on representing estate and trust beneficiaries and fiduciaries. And he has either author or co-authored several dozen articles published in legal journals on this topic and related topics.

This is a timely topic because of the increased use of the term "fiduciary" in popular media. Television, radio and, to a certain extent, print media, advertises that you can trust financial firms because they state "they are fiduciaries and must act in your best interest". This short commentary examines the truth of this claim.

Many professionals may owe "Fiduciary Duties". These include lawyers, doctors, corporate board members, business partners, guardians, estate representatives and so forth, but we're particularly interested in fiduciary responsibilities in investment context. So, as a preliminary definition, we will state that in such a context a fiduciary is a person who manages assets or provides investment advice or portfolio supervision services for the benefit of another.

Although a fiduciary may have many duties, it's generally recognized that the most fundamental duties are first, "a duty of loyalty". This is a duty to act solely in the interest of the beneficiary or client. No self-dealing, no bad faith actions, no opportunistic behaviors. And two, "a duty of prudence". This is a duty to invest and manage assets with care, skill and caution. These two fundamental duties suggest that a fiduciary must adhere to a standard of conduct, the duty of loyalty, and a standard of competence, a duty of prudence, to invest with care, skill and caution.

In addition to these two fundamental duties there are a variety of other fiduciary duties depending on the context in which the fiduciary office is held. The important question is "is it possible to modify or negate fiduciary duties?" The answer is emphatically "YES". Quoting the "Uniform Prudent Investor Act", "the prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered". Two quick examples – in a business partnership arrangement the partnership agreement may waive fiduciary obligations for one or more of the partners. And in an investment family trust context, a settler may waive the duty of impartiality by directing the trustee fiduciary to favor one beneficiary class over another. For example, to favor a current beneficiary over a remainder beneficiary.

For the consumer of financial services here is the "dark side". We can assert that we are an investment fiduciary and then we can ask you to sign a contract, an investment advisory agreement for example, that contains small print provisions mitigating or eliminating many of the fiduciary obligations. This is called the "contractarian" view of fiduciary obligations. We can claim that we're a fiduciary and put a contract in front of you that unless you read it very, very carefully you may not notice that we have contracted ourselves out of the obligation to follow fiduciary duties.

This contractarian view leads to the concept of an "opportunistic" fiduciary. A fiduciary that may be able to act in the fiduciary's interest rather than the client's interest. In such a situation where there's an allegation of a breach of duty courts, may consider some of the following factors:

- Is the negation of a fiduciary duty against public policy?
- Are the parties fully informed?
- Was there full disclosure?
- And are investors able to provide informed consent for such contractual provisions?

In this type of environment, disclosures, exculpatory clauses and contract provisions may permit a fiduciary to engage in what economists call "opportunistic behaviors". Behaviors not in the best interest of the client.

It is important to understand the implications of a contractarian view of fiduciary obligations. It is possible for a financial products or service organization to claim that they are acting in a fiduciary role with respect to a client, while at the same time asking the client to contract them out of their fiduciary obligations. The bottom line is it's important to know your fiduciary. "Seeking an advisor who claims to be a fiduciary is by no means an assurance of either fair treatment or disinterested advice".

Schultz Collins uses the process outlined below to enforce our role as a fiduciary relative to most of our clients.

- Proposal For Service: Defines your objectives; outlines the nature and scope of the engagement; lists things that we will do and will not do; and estimates the cost.
- Investment Disclosure Brochure: Provides disclosures regarding firm policies and practices, affiliation, potential conflicts of interest, methods, etc.
- Investment Advisory Agreement: The contract that governs the engagement—This contract acknowledges that Schultz Collins will act as a Fiduciary. The Investment Advisory Agreement is executed only after a client has fully reviewed the Disclosure Brochure.
- Portfolio Supervision in the capacity of a Non-Discretionary Investment Advisor—We take no action prior to informing you and obtaining your permission to proceed.

In short, we help you manage your assets. We do not conduct business behind veils of secrecy ("proprietary investment strategies"). Schultz Collins works diligently to mitigate or eliminate conflicts of interest, hidden costs and other opportunistic behaviors.

Please let us know if you have any questions or comments.

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