MARKET & LEGAL UPDATE

January 2022 REVIEW

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"Who Could Have Thought We Would be Missing 2021?"

Well, this was certainly not the start to 2022 that we were hoping for, to say the least. Markets thrived in 2021 and the hope for 2022 was that markets would continue their upward trajectory. Unfortunately, that hope was dashed quite handily as markets plunged significantly in the second half of the month amidst rising inflation, continued supply-chain disruptions, market reactions to the Fed's actions, including the potential for raising rates and tapering much earlier than previously anticipated and lower expectations for corporate profits. The Dow Jones Industrial Average (DJIA) closed out 2021 at 36,338.30. The index dropped over 1200 points to close out January at 35,131.86 for a loss of 3.2%. The S&P 500 fell even more, dropping 5.2% for the month while the NASDAQ Composite plunged 9.0%. International developed markets also fell in January, losing 4.8% as measured by the MSCI EAFE Index, while emerging markets lost 1.9%. Meanwhile, Treasury yields moved higher yet again, with the benchmark 10-year U.S. Treasury note jumping from 1.52% to 1.79% at the end of January amid growing concerns over sustained inflation.

According to the Commerce Department, U.S. consumer spending, which accounts for more than two-thirds of U.S. economic activity, fell in December amid the spread of the Omicron variant and higher prices. Spending decreased 0.6%, suggesting that the economy lost some steam heading into 2022. However, consumers likely began their holiday shopping much earlier than usual last year as supply chain issues not only caused significant delays in receiving items but resulted in substantial supply shortages as well. Not surprisingly, these issues have contributed to an increase in inflation to levels not seen in decades.

Market Return Indexes	January 2022	YTD 2022
Dow Jones Industrial Average	-3.2%	-3.2%
S&P 500	-5.2%	-5.2%
NASDAQ (price change)	-9.0%	-9.0%
MSCI Eur. Australasia Far East (EAFE)	-4.8%	-4.8%
MSCI Emerging Markets	-1.9%	-1.9%
Bloomberg Barclays High Yield	-2.7%	-2.7%
Bloomberg Barclays Aggregate Bond	-2.2%	-2.2%
Yield Data	**January 2022**	**December 2022**
U.S. 10-Year Treasury Yield	1.79%	1.52%

In the latest release, data showed that the consumer price index (CPI) rose 0.5% for the month of December, with CPI climbing 7% in 2021, the largest increase since June 1982, nearly four decades ago. Core CPI, which excludes the volatile food and energy components, rose 5.5% from a year earlier, the biggest advance since 1991. Finally, wholesale prices also jumped higher, climbing 9.7% for the year, the largest annual rise since data started being recorded back in 2010.

Moreover, the personal consumption expenditures (PCE) price index jumped higher as well. This inflation index measures a basket of goods and services that is updated annually in contrast to the CPI, which measures a fixed basket. PCE rose 0.4% last month and is up 5.8% on a year-over-year basis. Core PCE, which excludes the food and energy components like core CPI, accelerated 4.9% year-on-year in December, the biggest rise since September 1983.

This data showed that high inflation has proven to be much more stubborn than the Fed had anticipated and has reinforced expectations that the Fed would begin raising interest rates in March,

a significant policy modification from the timeline projected just a few months earlier. Following the conclusion of its January meeting, the Federal Open Market Committee (FOMC) decided to keep the target range for the federal funds rate at 0 to 0.25% but indicated that it expects it will soon be appropriate to raise the target range. According to MarketWatch, Fed funds futures are pointing to more than a 50% likelihood that the central bank could raise rates by 0.25% at least five times in 2022 whereas analysts were projecting only three hikes in 2022 back in December. The markets reacted negatively to the elevated hikes during the month, factoring in whether the additional rate hikes could derail economic growth. Further, the Committee decided to continue to reduce the monthly pace of its net asset purchases, bringing them to an end in early March 2022. Beginning in February 2022, the Committee will increase its holdings of Treasury securities by at least $20 billion per month and of agency mortgage-backed securities by at least $10 billion per month.

Meanwhile, the unemployment rate has now fallen to 3.9% though labor market tightness continues to persist and only 199,000 jobs were added during the month, far short of the 450,000 jobs expected to be added. Further, wages rose 4.7% year-over-year, which is not surprising considering the demand for workers far exceeds the supply. Interestingly, wages may increase further, as 21 states entered 2022 increasing their minimum wage by an average of 41 cents, with many states approving incremental minimum wage increases for multiple years ahead. Additionally, workers are also set to get some of the largest cost-of-living adjustments seen in decades.

Finally, the economy grew at a 6.9% annualized rate last quarter, accelerating from the July-September quarter's 2.3% pace. That helped to boost growth in 2021 to 5.7%, the strongest since 1984. By comparison, the economy contracted 3.4% in 2020.

As the Omicron variant continues to spread, it seems investors have shifted their concern to the persistent inflationary pressures and the Fed's actions to combat rising prices. While the economic outlook remains relatively positive, it will be hard to ignore the existing supply chain issues and the impact that they continue to have on prices and interest rates going forward. January's rough start reminded investors of market volatility that had been missing for much of 2021, when the S&P 500 set 70 new record highs, the second most in a calendar year despite lingering COVID issues. Higher corporate profits could be challenged in 2022 when faced with potentially more rate hikes and higher inflation, and profits ultimately impact market returns.

LEGAL UPDATE | The Challenges of Beneficiary Determinations

Administering a retirement plan can present many challenges, not the least of which can be determining who is the rightful beneficiary of a deceased participant's benefits. Most often, this challenge will arise where a beneficiary designation was not made in accordance with the plan's administrative procedures and/or where a beneficiary designation that was made is unclear or ambiguous. Examples of the types of issues that a plan administrator may confront include missing or incomplete beneficiary designation forms, the failure to clearly specify contingent beneficiaries in the event that one or more primary plan beneficiaries pre-decease the participant, and attempts by participants to make beneficiary designations through external documents (such as wills or trusts), outside of the normal administrative procedures of the plan.

Since the participant is no longer around to clarify their intent, and the plan administrator is potentially responsible and liable to the rightful beneficiary if a death benefit is erroneously distributed, great care should be taken in establishing reasonable administrative procedures to make beneficiary designations, communicating such procedures to plan participants, and ensuring that participants follow such procedures. Well established procedures will allow the plan administrator to determine who the rightful beneficiary is when a participant dies, as well as specify what happens when a beneficiary designation was not properly made.

Administrative Procedures

The best time for a plan administrator to obtain a participant's initial beneficiary designation is when the participant first becomes eligible to participate in the plan. At that time, newly enrolled participants should be required to complete a beneficiary designation form as part of their enrollment materials and such form should clearly indicate that the plan's default beneficiary provisions (see below) will apply if a properly completed beneficiary designation form (with appropriate spousal consent, if necessary) is not submitted to the plan administrator in accordance with plan procedures. The form should also indicate that any beneficiary designation that a participant wishes to make using an outside document (such as a will or a trust) may only be made with express consent of the plan administrator.

Upon the receipt of a participant's beneficiary designation form, such form should be reviewed, both for clarity as well as for completeness. The form should indicate who the participant's primary beneficiary is or, if more than one beneficiary is designated, the share that each such beneficiary is entitled to receive. The amount that each beneficiary will receive can be specified either as a percentage of the participant's death benefit (not to exceed 100% in total) or as an objectively determinable share of the death benefit, using language such as "to my children, A, B, and C in equal shares". The beneficiary designation form should also clearly indicate who the contingent beneficiaries are if one or more primary beneficiaries pre-decease the participant.

Beneficiary designation forms submitted by participants who wish to make or update their beneficiary designations at a later date should be similarly reviewed at the time that they are submitted and, after determining that new or updated beneficiary designation form is accurate and complete, any prior beneficiary designation forms should be marked as superseded.

Finally, using a detailed beneficiary designation form review checklist to ensure that forms submitted by participants are legible, complete, and make sense is essential to proper plan administration. Merely glancing at the forms to confirm beneficiary names and social security numbers is not enough to satisfy a plan administrator's duty to determine the rightful beneficiary and avoid potential fiduciary liability.

Default Beneficiaries

Most retirement plan documents contain provisions mandating who will receive death benefits payable to a deceased participant who dies without designating a beneficiary under the plan. These provisions typically cover all of the various situations that could necessitate making a distribution to a "default" beneficiary and can sometimes be applicable even to participants who made a beneficiary designation that subsequently turned out to be incomplete or defective, either in form or in substance. To avoid potential compliance issues and attendant liability, plans that do not contain such default beneficiary provisions should be amended to add them.

Please note that, under applicable law, the primary default beneficiary for a participant will generally be the participant's spouse, and participants who wish to designate a beneficiary other than their spouse with respect to all, or a portion of, their death benefits, must obtain their spouse's written consent to do so. If a deceased participant does not have a surviving spouse, the other default beneficiaries generally are, in order of priority, the participant's children, parents, or their estate.

In addition to the default beneficiary provisions, there are other helpful plan provisions when it comes to determining who the appropriate beneficiary is in certain complex situations. For example, many plan documents provide that a divorce decree will automatically revoke a participant's prior designation of a (former) spouse as their plan beneficiary, although certain exceptions may apply, such as in the case where a Qualified Domestic Relations Order ("QDRO") grants the former spouse certain plan benefits.

Complex Beneficiary Issues

At times a plan administrator is confronted with complex beneficiary issues that are far from routine. For example, in the case of participant who is unable to act on their own behalf, an agent may be appointed to handle their affairs and request payment of plan benefits or designate a beneficiary of the plan's death benefit. It is important to note that the appointment of such an agent is generally done through the execution of a Power of Attorney, which is governed under state law, and that agents must generally be granted specific authority to take certain actions under a qualified plan (such as designating a beneficiary) and that merely mentioning retirement plan benefits is insufficient. Please see the June, 2021 Market & Legal Update for additional information regarding Powers of Attorney.

Similarly, where, despite a plan administrator's best efforts to adopt and implement robust procedures to determine who a participant's beneficiary is prior to death, it is unclear who the rightful beneficiary of a participant's death benefit is, based on the available plan documentation, the administrator will need to make a subjective decision as plan fiduciary. In making such decisions, the administrator may take into account other (non-retirement related) information that they are aware of or have in their possession, such as life insurance and health insurance information concerning the participant, the relationship of the participant to each purported beneficiary, and the size of the death benefit actually payable.

Finally, plan administrators should remember that directing the distribution of retirement plan benefits is a fiduciary act that can result in liability in the event of an erroneous determination. Thus, beneficiary designations should be carefully reviewed taking into account all of the relevant facts and circumstances that are known to the plan administrator. In certain close cases, it may be advisable to seek the opinion of outside counsel, or even obtain a declaratory judgment from a court of competent jurisdiction, especially where either a significant amount of money is involved or there is a dispute between potential beneficiaries.

The USI Consulting Group (USICG) team is happy to assist plan sponsors with all retirement plan compliance matters and changes in the market, including those discussed here, to help you mitigate risk and financial impact to your organization. Questions? Contact your USICG representative, visit our Contact Us page or reach out to us directly at information@usicg.com.

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An index is a measure of value changes in a representative grouping of stocks, bonds, or other securities. Indexes are used primarily for comparative performance measurement and as a gauge of movements in financial markets. You can not invest directly in an index and, for comparative purposes; they do not reflect the effect of the various fees inherent in actual investment vehicles.

The S&P 500 Index is a market value weighted index showing the change in the aggregate market value of 500 U.S. stocks. It is a commonly used measure of stock market total return performance.

The Dow Jones Industrial Average is a price weighted index comprised of 30 actively traded blue chip stocks; primarily industrial companies, but including some service oriented firms.

The NASDAQ Composite Index is a market-value weighted index that measures all domestic and non-U.S. based securities listed on the NASDAQ Stock Market.

Gross Domestic Product (GDP) is the market value of the goods and services produced by labor and property in the U.S. It is comprised of consumer and government purchases, net exports of goods and services, and private domestic investments. The Commerce Department releases figures for GDP on a quarterly basis. Inflation adjusted GDP (or real GDP) is used to measure growth of the U.S. economy.

The MSCI Europe and Australasia, Far East Equity Index (EAFE) is a market capitalization weighted unmanaged index developed by Morgan Stanley Capital International to measure approximately 1,100 securities in 21 major overseas stock markets. It is a commonly used measure for foreign stock market performance.

The Barclays Capital U.S. Aggregate Index covers the U.S. Dollar denominated investment grade, fixed-rate, taxable bond market of SEC-registered securities.

The Barclays Capital U.S. Corporate High Yield Index covers the U.S. Dollar denominated, non-investment grade, fixed income, taxable corporate bond market. Securities are classified as high-yield if the middle rating of Moody's Fitch, and S&P is Ba1/BB+/BB+ or below.

The MSCI Emerging Markets Index (EM) is a free-float-adjusted market-capitalization index developed by Morgan Stanley Capital International. It is designed to measure the equity market performance of 26 emerging market countries.

The 10 Year Treasury Yield is the interest rate the U.S. government pays to borrow money for a 10-year period. In addition to influencing how much the government pays to borrow over this time-frame, the 10-year Treasury Yields also determines how much investors earn by investing in this debt and it is a good indicator of investor sentiment
The higher the yield, the better the economic outlook.

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