Caldwell Trust Company

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Investment letter

Pay attention to Warren Buffet's deeds, not his words

Michel de Montaigne, a French Renaissance thinker, proclaimed in the 16th century that "Saying is one thing and doing is another." Before him, St. Francis of Assisi is widely credited with saying, "Preach the gospel at all times. Use words if necessary." What this tells us is that we must always look at what people do, not listen to what they say, and for investors today, this is more important than ever. Let's use Warren Buffet as an example.

Mr. Buffett, an American icon now almost 80, is known best for his uncanny ability to continue producing high returns for investors in the public company he founded and runs, Berkshire Hathaway (*BRK-A)* which closed at $99,600 a share on the first trading day of 2010. Buffett recently surprised financial markets by making a huge bet: he bought all of the remaining outstanding shares of Burlington Northern Railroad for $40 billion or so. Despite the highly positive statement some think this made about America's future, the stock market just yawned. The comments that the media repeated a zillion times included everything from speculating that he's senile, to congratulating him for his boldness and vision, to complimenting him on his "steal."

Have no doubt about his abilities as a wise custodian of money for himself and his investors. But the mystique that surrounds him and his notable successes seems to blind some to what is behind this shrewd and enormously wealthy man. Here are some of the things he says publicly but does privately.

What He Says: He is often quoted as saying that he never watches the markets and just doesn't care what they are doing or whether stocks go up or down in price. One could gain the impression from this that he just buys value and hangs on, and that investors would be well advised to do the same with their own money. His mantra is to buy solid cash flow companies and reinvest that cash flow in more cash flow companies.

What He Did: He was correct in telling the public that he has no interest in price changes. But what he did was buy a railroad! He jumped big and fast as soon as he saw a bargain so large and so good that he knew only a few others could possibly swing it.

What He Says: He used the Burlington publicity to declare his praise for current national policies while making sure that everyone knew that his purchase signaled how confident he is in America and its future.

What He Did: In a time of breathtaking increases in the federal deficit, he exchanged $40 billion for rail rolling stock, rights-of-way and mineral rights in and on the ground, buying the lowest-cost form of transportation known for moving heavy bulk materials across the country. What could be a better or smarter way to protect himself and his investors against erosion in the dollar's purchasing power? The current recessionary impact on rail revenues was furthest from his mind. What surely *was* on his mind was the enormous cash replacement value ahead.

What He Says: He expressed support for an administration that favors a fairer distribution of wealth.

What He Did: With his own fortune, he set things up so he will be the one to spread his wealth around, not the government. By putting the bulk of his multi-billion dollar estate in private, non-taxed charitable hands, he and his successors will be the ones deciding how best to redistribute that much money for the benefit of mankind in a more efficient way than allowing Washington to decide who gets what.

What He Says: He has spoken in favor of a fairer system of taxation—one that taxes the wealthy and particularly Wall Street fat cats. Remember, these were the awful ones that screwed up the

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Bill Cunningham joins Caldwell

William A. Cunningham has joined Caldwell Trust Company as vice president and trust officer, according to R. G. "Kelly" Caldwell, Jr., president and CEO. Cunningham is based in Caldwell's Sarasota office at 1561 Main Street.

Cunningham brings 45 years of trust experience to his new position. He began his career at Riggs National Bank in Washington, D.C., working for 12 years in trust operations. In 1977, the Michigan native moved to Sarasota, where he served as vice president at Southeast Bank, N.A., with responsibilities in trust/estate administration. He joined Northern Trust Bank of Florida, N.A., as vice president of

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Who is legally responsible for your employee retirement plan?

Contrary to popular belief, the person who is responsible—and legally liable—for the fees and performance of your employee retirement plan is not the broker or insurance company with whom the plan resides, says John Tufaro, retirement plan specialist for Caldwell Trust Company. This misconception is illustrated in the reprint presented below, not to single out John Hancock but to illustrate how employers can misunderstand the situation.

"Most likely, the trustee and plan administrator of your 401(k) or 403(b) is someone on your payroll, typically the business owner, corporate officer or human resources manager," Tufaro says. "That person is the named fiduciary, defined as 'an individual acting solely in the best interest of plan participants and their beneficiaries.'"

Few employers realize that as the named fiduciary, the business owner and company executives can be personally sued. Rulings in recent lawsuits have affirmed this position. "When Caldwell Trust Company serves as a plan's trustee, we share the responsibility to ensure that the plan is compliant, and that the investments are performing well for the employees without conflict of interest," Tufaro says.

The Department of Labor provides a checklist for trustees to conduct an annual review of each retirement plan. "We are happy to walk a plan fiduciary through that checklist," John says. "We can also provide an analysis of a company's plan costs and performance."

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(The following article is reprinted from DailyFinance to illustrate some aspects of fiduciary responsibility.)

John Hancock, Are You a Real 401(k) Fiduciary?

by Daniel Solin

John Hancock is a big player in the 401(k) market. According to its website, the Boston-based financial services giant is the No. 1 full-service provider to 401(k) plans. It serves over 42,000 plans with more than 1.7 million participants. Whether these participants will retire in dignity or in poverty depends largely on the quality of the investment options offered by John Hancock.

I am sure most participants believe John Hancock is a "fiduciary," meaning that it ensures the investment options available to plan participants are the best ones that can be selected—and that John Hancock puts the interest of the plan participants above all others.

Materials Promote Notion It's A Fiduciary

John Hancock does its best to encourage this belief. It represents that it is the "industry-leading fiduciary responsibility support." In October 2005, it announced the launch of a "fiduciary standards warranty for 401(k) plans."

The warranty certainly sounded impressive. It provided "...401(k) plan sponsors and participants with specific assurances that its investment selection and monitoring process satisfies fiduciary standards established under the Employee Retirement Income Security Act (ERISA). The company promises to restore plan losses and pay litigation costs related to the suitability of this process or the investment options themselves. The warranty is being offered at no extra cost to plan sponsors."

Flash forward to 2008. John Charters, a trustee of a law firm's 401(k) plan, alleged that John Hancock charged excessive fees and retained "revenue-sharing" payments from mutual funds included in the plan. As I explained in a previous blog, these payments are essentially kickbacks by the fund families to advisers to 401(k) plans as the price of entry into the plan's investment options. If they don't pay, they don't get to play.

Company Backs Off Fiduciary Claim in Lawsuit

Prior to settling this case on undisclosed terms, John Hancock attempted to defend its conduct. How? According to a decision on its unsuccessful Motion to Dismiss the complaint, "Hancock argues that it is not an ERISA fiduciary because it does not exercise discretionary authority or control over the disposition of Plan assets." What?!

The leader in "fiduciary responsibility support" claims it is not a fiduciary. How can this be?

Welcome to the cleverly nuanced world of 401(k) plans where it is common practice for brokers, most mutual fund companies and insurance companies to talk the fiduciary talk, but not walk the fiduciary walk.

Employers who believe they are getting a real fiduciary are often sadly mistaken. The big players who advise these plans—brokers and insurance companies—want no part of real liability for the quality of the investment options selected for inclusion in the plan. They understand the serious money is in accepting "revenue-sharing" payments from big mutual fund families.

Find An Advisor Who Can Really Commit

There is one way employers can protect themselves from these slick practices: Call the adviser to your 401(k) plan. Ask for written confirmation they are "ERISA section 3(38) fiduciaries." In all likelihood, they will not give you this assurance because a real ERISA fiduciary cannot accept revenue-sharing payments. If this is the case, you need to find an advisor who will make this commitment.

I contacted John Hancock and asked them to reconcile the position it takes when it is soliciting business with the very different legal position it asserted in the Charters case. I received no response.

Dan Solin covers retirement investing for DailyFinance. He is a Senior Vice-President of Index Funds Advisors (ifa.com) and the author of The Smartest Investment Book You'll Ever Read, The Smartest 401(k) Book You'll Ever Read, *and* The Smartest Retirement Book You'll Ever Read. *Visit his website at: smartestinvestmentbook.com.*

Caldwell is a Hometown Partner of South County Family YMCA

Caldwell Trust Company and its staff have maintained a long-term relationship, both corporate and personal, with the South County Family YMCA for many years. "We are proud to sign on again as Hometown Partners," says R.G. "Kelly" Caldwell, Jr., the trust company's president and CEO. "The Y does so much good for so many people. We're happy that we can help them."

HOMETOWN PARTNERS
SOUTH COUNTY FAMILY YMCA

The Y carries out its mission at two branches, one at 701 Center Road, Venice, and another at 701 Medical Boulevard, Englewood. The organization serves more than 22,000 individuals, families and children annually and provides childcare to more than 700 children daily. It offers more than 150 different organized programs including health and fitness, youth sports and childcare. Scholarships are available for any Y program.

As a Hometown Partner, Caldwell is a sponsor of every event throughout the year at both branches. For Caldwell, support means more than just writing a check. Kelly is in his third year as chair of the Y's development committee and Wendy Fishman, a Caldwell vice president and trust officer, has been on the Board for more than ten years. She will be the chief volunteer officer in 2011, according to Julia Steele, the Y's chief development officer.

Wendy is also wrapping up her second stint as co-chair of the Y's Annual Black Tie fundraiser, whose theme this year is "Starway to Heaven." Joann Tufaro, the wife of John Tufaro, Caldwell's retirement plan specialist, is also a volunteer on the Black Tie event committee. The gala is a significant fundraiser for this not-for-profit organization. Last year's event raised $126,000 to benefit the YMCA's Children and Family Scholarship Program and ongoing operations.

Kelly Caldwell is looking even farther ahead. "As Chair of our Development Committee, Kelly is leading the charge to re-establish the South County Family YMCA Foundation, because endowed gifts to the organization are the real key to long-term financial stability," says Ken Modzelewski, the Y's president and CEO.

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Expect growth to be sluggish

banking system and became insanely wealthy at the expense of the average investor, who just bought stocks and held them in hopes that they would increase in value some day.

What He's Doing Today: Pending U.S. Treasury approval, he and "partner" Goldman Sachs will soon arrange to get $3 billion of "credits" against their own income taxes from failed quasi-government agencies Fannie Mae and Freddie Mac. His taxes get cut at taxpayer expense and Goldman gets a further injection of principal. So much for putting it to the rich guys.

CONCLUSION:

What does all this mean? Simply this: don't listen to what the financial gurus of the world tell you; just watch what they do. It appears Buffet had three things in mind when he acquired Burlington: 1. move paper dollars into hard assets; 2. save huge taxes and stop market price fluctuations by privatizing a public company; and 3. put Burlington into his company at a cost basis that he can hold steady inside BRK-A to stabilize its price. Essentially, he set his own price for Burlington and took it out of the hands of Wall Street crazies who trade in huge amounts for the flimsiest reasons, just to force price changes for their own benefit and profit.

So, what should non-Buffet-level investors like us do? In expectation of economic growth being sluggish for a while, we would keep to safety and quality, avoid long-term fixed income investments—which decline when interest rates rise—and try to get as much solid income as possible from dividends and interest rather than from capital gains.

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Clients are key for Bill Cunningham

trust administration in 1991, remaining with Northern Trust until his retirement in August 2009. Bill came out of retirement to join Caldwell Trust Company.

He has been acquainted with Caldwell and some of its people for decades. His co-workers at Southeast Bank included Lloyd "Leo" O'Meara, who later became a co-founder of Caldwell Trust Company, and Jan Miller, a Caldwell vice president and trust officer. He has also known Kelly Caldwell for many years.

"We are very pleased to welcome Bill," says Kelly. "In addition to his enviable record of trust experience, he shares our traditional values and our emphasis on personal service."

Cunningham says, "I'm pleased to be working with a small company that shares my philosophy about customer relations, that the client is of utmost importance. I have client relationships going back to my days with Southeast Bank. I care about my clients."

Bill cares about community service as well. He has been active with at least 17 organizations during his years in the Sarasota area and recently retired from the board of Children First after ten years of service, including a term as board president "My favorite causes involve children," he says. "Second comes TideWell Hospice. At one time, I was on five boards. Now I am just on the board of TideWell Hospice." Cunningham has come full circle with that organization, beginning some 28 years ago with Hospice of Southwest Florida Foundation, TideWell's precursor organization.

To contact Bill Cunningham, email bill@ctrust.com or call 941.926.9336.

Real estate and broadcasting veteran John Booth joins board

John S. Booth III has always been proud to follow in his father's footsteps. Since his dad, Sam Booth, was an original investor and co-founder of Caldwell Trust Company, it isn't surprising that John, a longtime Caldwell shareholder and client, has joined its board. The timing is also fitting: Sam passed away in January 2009.

"We couldn't be more pleased that John is with us," says R.G. 'Kelly' Caldwell, Jr., president and CEO. "We have always been a family-oriented company, and we're thrilled that John is helping to carry on the tradition."

John and Sam Booth both began their dual career paths early in life, in radio broadcasting. "Dad was a pioneer. He was always on the leading edge," John says. "He started a radio station in Chambersburg, Pennsylvania, but WWII intervened. Then he started cable TV in the mountains of Pennsylvania. I grew up in broadcasting and was a deejay at 14, playing a Top 40 format, of course. This was in the heyday of formula radio."

After attending Princeton University for two years, John transferred to the University of Missouri, where he was sports director of KOMU-TV. He received his bachelor of journalism degree in 1965. By that time, Sam had "retired" and moved to Sarasota with his wife Harriett and their two other children, Tom and Margaret. He did not stay retired for long.

After graduation, John worked at a Baltimore radio station. In 1966, he and his wife moved to Florida. "There was no cable TV except in Sarasota's city limits and antenna reception was lousy. Channel 10 in Tampa, the only ABC station, carried Lawrence Welk. That was a big deal. Dad figured a way to build cable in Sarasota County. He started Sarasota Cablevision, which became the largest underground cable TV system in the nation at the time. When I got here, Dad gave me a shovel and I learned cable TV from the ground up. It was a really creative, fun time.

"This was in the late '60s, early '70, before computers and the digital revolution. Our news channel, for example, was a TV camera bolted to an AP teletype printer. Well, Dad found a guy who could do digital. We ultimately had a new business, making and selling boxes that sent the teletype signal from a phone line directly to a TV screen. It was magic!

"Sarasota's growth was exploding. Our investors sold Sarasota Cablevision to a GTE division and I worked for them as an engineer, but I wasn't cut out for a corporate setting," John says. He got his real estate license, and father and son became developers. "We got involved with Venice Sands and Valencia condominiums in Venice. I opened my own real estate office and was also president of Chambersburg Broadcasting and WEEJ-FM in Port Charlotte." In addition, he was president of the Venice Area Board of Realtors and United Way of South Sarasota County.

John is now retired but still always busy. "Mary and I have been married for 45 years," he says. "We have a daughter, Carey, and a granddaughter."

He was surprised when Kelly asked him to join the board. "But Kelly said, 'What we want is a common-sense approach to handling the trust business.' As a Caldwell client, I look to see how we can improve things for our clients," John says. "If we take care of our clients, the business will take care of itself."

Caldwell Trust Company

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Founding Principles

- **Provide our clients with highly personalized, one-on-one attention and care.**
- **Satisfy and retain clients, building loyalties and gaining word-of-mouth referrals that attract new clients.**
- **Provide better service by using the latest electronic technology to implement our functions internally.**
- **Hire skilled, experienced trust professionals and help them to become part-owners, thus nurturing loyalty and eagerness to serve.**

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