

1 AN ACT in relation to trusts.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Trusts and Trustees Act is amended by  
5 adding Section 5.3 as follows:

6 (760 ILCS 5/5.3 new)

7 Sec. 5.3. Investing for total return. With the consent  
8 of the beneficiaries then entitled to receive or eligible to  
9 have the benefit of the income, and in the absence of  
10 specific direction to the contrary by the settlor in the  
11 trust document, a trustee may, but is not required to, invest  
12 for total return. A trustee invests for total return when the  
13 trustee, exercising reasonable business judgment, invests the  
14 trust's portfolio with the object of increasing the total  
15 return from the trust's investments expected over the life of  
16 the trust without regard to whether the return takes the form  
17 of current income or capital gain.

18 If a trustee invests for total return, the income of the  
19 trust shall be credited with income from the trust's  
20 investments in accordance with the Principal and Income Act,  
21 and shall also be credited, first from realized capital gain,  
22 and then from unrealized capital gain, but only to the extent  
23 either gain exists, with the additional income amount. As  
24 used in this Section, "additional income amount" means the  
25 amount of additional trust accounting income, if any, that  
26 would have been earned by the trust had the trustee invested  
27 without regard to a total return approach and the trust's  
28 portfolio had been allocated among asset classes solely in  
29 accordance with the duty to balance the needs of income  
30 beneficiaries for trust accounting income and the interests  
31 of remaindermen in growth of principal. In determining the

1 amount of additional trust accounting income that would have  
2 been generated from the portfolio allocation, the trustee  
3 may use the average current income return for market indices  
4 that are customarily used by trustees in the measurement of  
5 investment performance for each such asset class.

6 The trustee shall credit the income of the trust with the  
7 additional income amount within a reasonable time after the  
8 close of the trust's tax year, and shall calculate realized  
9 and unrealized capital gains as of the close of the trust's  
10 tax year on average over the 3 preceding tax years (or, if  
11 the trust has existed for less than 3 years, over the lesser  
12 number of years).

13 A trustee's judgment concerning any portfolio allocation,  
14 any additional income amount, or investing for total return  
15 under this Section may be challenged if it was an abuse of  
16 discretion. A court may determine that a trustee abused its  
17 discretion only if the trustee's judgment was inconsistent  
18 with the prudent investor rule, but not merely because the  
19 court would have made a different judgment. A beneficiary  
20 who challenges a trustee's judgment has the burden of  
21 establishing that it was an abuse of discretion.

22 A trustee shall notify the primary beneficiaries, as  
23 defined in Section 16.1 of this Act, of its election to  
24 invest for total return and the election shall remain in  
25 effect until revoked by a notice from the trustee to the then  
26 primary beneficiaries.