

By Edmond M. Ianni

Family Capital Planning and Captive Risk Management

An interdisciplinary approach to developing a holistic solution

*Well Georgia Sam he had a bloody nose
Welfare Department they wouldn't give him no clothes
He asked poor Howard where can I go
Howard said there's only one place I know
Sam said tell me quick man I got to run
Ol' Howard just pointed with his gun
And said that way down on Highway 61.*

— from Bob Dylan's "Highway 61 Revisited"

Although Bob Dylan wrote those lyrics 45 years ago, those verses can be sung today as a risk management and planning metaphor. With the financial crisis that has befallen our economy and affected businesses and families across the United States, capital and risk management needs have intensified. Georgia Sam metaphorically symbolizes the contemporary challenge: Having encountered risk (bloody nose), and without third-party coverage (no clothes from the Welfare Department), Georgia Sam resorts to self-help for his retained risk; Ol' (read "sagacious") Howard suggests to hapless Sam an optimal solution ("only one place" that Howard judiciously knows) of journeying on a nearby roadway—a path, within Sam's reach, to refuge, security and ultimate self-help. Today, many businesses—small and large, both privately-held and publicly-owned—and families face similar challenges. Preserving and managing business and family capital are heightened needs and, therefore, planning priorities

in this debilitated economic environment.

An interdisciplinary approach to developing a holistic planning solution to this capital and risk management challenge is evolving. This approach utilizes many of the captive, trust, tax, legal, asset protection, business entity, capital management, financial, regulatory, corporate governance and structural benefits that the State of Delaware offers—and which are collectively called the "Delaware advantages." In fact, if one surveys the laws of all 50 states, one understands that no state, other than Delaware, offers all of these customizable benefits. It's beyond the scope of this article to discuss in detail all of these advantages. Rather, let's focus on the developing crossroads of family wealth and captive planning by describing an illustrative example of this interdisciplinary approach.

Example

Let's take the example of a fictitious family, the Astutewicks. Nelia Astutewick is the chief operating officer of a publicly held alternative energy company. Her husband, Franklin, partly owns and is a manager of the family-owned business, Recessionproof Manufacturing (ReMan). Nelia and Franklin have three adult children, two daughters and one son. All of them reside in an income-taxing state outside the State of Delaware.

Franklin is interested in cost-effective risk management solutions for ReMan, and Nelia is interested in capital preserving management of her executive compensation. Both are also mindful of the need to protect and preserve their family capital, that is, the need to integrate their respective interests with family wealth planning. They discuss their situation and objectives with you, their professional counsel, and together you develop options. While there are several possible options, Nelia and Franklin choose the following interdisciplinary strategy.

Edmond M. Ianni, of Wilmington, Del., is the director of strategic development for the State of Delaware Department of Insurance and former chief strategy officer for Millennium Wealth Management



The DSST Captive

ReMan is an expansive, closely-held family business with manufacturing facilities in four states. It employs over 200 workers. As a family-owned business, ReMan has found commercial insurance in the marketplace to be rather expensive. You explain to Franklin that a captive insurance company possibly may be a more cost-effective alternative to managing some of ReMan's risks. After careful analysis, Franklin learns that it would be more cost-effective for ReMan to captively insure certain of its enterprise risks—specifically, its property and casualty, product liability, business interruption, warranty and employer-provided health insurance risks.

Delaware law permits much flexibility in the formation of a captive insurance company. It may be created in any one of a variety of legal forms, including, for example, a partnership, trust, association, corporation, limited liability company (LLC) or statutory trust. Franklin discusses with you different captive insurance company designs and settles on a Delaware serialized entity, namely, a Delaware serialized statutory trust (DSST).¹ He chooses that form of captive because it provides certain advantages and meets his management preferences.²

Captive defined: Franklin understands that captive insurance is a form of private risk transfer and coverage. Captive insurance essentially involves the transfer of specified business risks from an enterprise to a separate, typically private, legal entity (the captive insurer), which economically assumes those risks and is financially responsible for any losses resulting from the realization of those risks. The captive insurer (captive), not the captively insured enterprise, therefore is responsible for payment of claims on those losses.

A captive is capitalized in accordance with the requirements of applicable state law. It's generally regulated by the state of its domicile. In the United States, Delaware, 26 other states and the District of Columbia currently have captive insurance company laws on their books. A fundamental benefit of utilizing a captive is capital—specifically, access to, preservation of and growth of financial capital. Instead of purchasing insurance in the commercial marketplace, a business that utilizes a customized captive in effect recycles precious capital to itself (and its owners) rather than

permanently expend capital to a third-party commercial insurer. Contrast this with the example of paying for car insurance: those car insurance premium expenditures are permanent; you generally don't get any of that expended capital returned to you—the only “return” you would receive is in the form of a payment to you in the event that you make a qualified claim during the life of the policy. By contrast, a captive insuring one's selected enterprise risks is typically capitalized by that enterprise or its owners and thereby, in effect, provides capital to itself, which capital—if it's managed well and if the enterprise risks and claims are managed well—can be returned in the forms of claims payments and dividends. Moreover, a properly organized and well-managed captive generally is more cost-effective and less expensive than purchased third-party commercial insurance.

Franklin understands this basic capital benefit of utilizing a captive as part of ReMan's risk management strategy. He also understands that the captive, as a state-regulated entity, must meet ongoing regulatory requirements, including, for example, the maintenance of minimum capital and surplus, periodic reporting, investment restrictions, audits and examinations and notice or pre-approval requirements for material changes or material transactions. Understanding all of that, thanks to your good multidisciplinary counsel, Franklin proceeds with his choice of the DSST, in which he sees the following additional business and family wealth planning advantages.

Customized series business units: First, the DSST form of captive requires the expense of establishing only one legal entity, compared to the expense of establishing multiple legal entities such as a sponsored captive insurance company with separate incorporated subsidiary cells thereunder.³ The DSST gives Franklin the flexibility to establish one or more series therein without the need or expense to create multiple standalone entities or incorporated subsidiaries. As Franklin wishes to separately manage ReMan's (1) property and casualty, (2) product liability, (3) business interruption, (4) warranty, and (5) employer-provided health insurance risks, he intends to compartmentalize those risks by initially establishing five series within the DSST—Series A, Series B, Series C, Series D and Series E.

Selected independent trustee: Second, although a Delaware LLC also can be serialized as a captive insurance company,⁴ Franklin chooses the DSST because he prefers an independent trustee (specifically, an independent corporate trustee) to oversee the management of the captive. Such a trustee will ensure good fiduciary governance of the business and affairs of the new captive.

Tailored fiduciary duties: Third, the DSST provides other structuring flexibility that Franklin desires. Delaware allows the fiduciary duties of the officers and other managers of a DSST captive to be eliminated or restricted.⁵ Considering that some of the officers and managers of this captive also will be among its beneficial owners as well as owners of ReMan (typical for closely held or family businesses), Franklin sees the practical advantage of, for example, eliminating their fiduciary duties of loyalty, up-front in the DSST's governing instrument. That would facilitate their properly carrying out their business mission and would avoid technical breaches of that duty by conducting such proper, but interested or affiliated, business transactions, which otherwise would be problematic.

Cost-effective governance: Fourth, the DSST structure enables the cost-effective use of centralized governance, notwithstanding its multiple serialization. Franklin estimates that this feature substantially will reduce the expenses of operating and managing (O&M) the captive, especially when compared to the O&M expenses of separately incorporated captives or captive cells.⁶ This structural benefit effectively helps to preserve precious business capital.

Income tax advantages: Fifth, Franklin sees other capital saving opportunities with the DSST. Anticipating that the new captive will need to write less than \$1.2 million of annual business interruption premium in the foreseeable future, Franklin understands from his professional tax counsel that Series C of the new DSST captive (the business interruption series business unit) may qualify for favorable federal income tax treatment (pursuant to Internal Revenue Code Section 831(b)).⁷ According to his counsel, for such treatment, that series generally will have only its investment income, but not its premium income, subject to federal income taxation. Assuming an otherwise applicable federal corporate income tax rate of 35 percent, that benefit could mean up to an annual tax savings of \$420,000—a significant

annual preservation of capital. Moreover, as a licensed Delaware captive paying a modest state premium tax, the DSST will be exempt from Delaware business income tax.⁸

Favorable premium tax treatment: Sixth, Franklin also likes the fact that Delaware caps its payable annual premium tax, regardless of future premium growth, and provides other related incentives in this regard.⁹ For example, the world's largest captive (multi-billion dollars in assets), which is operationally headquartered and licensed in Delaware, currently has its annual state premium tax capped at \$50,000.¹⁰

Furthermore, Franklin appreciates Delaware's advantageous premium tax calculation for a serialized Delaware captive: notwithstanding multiple series of such captive, Delaware's premium tax requirements are calculated on the aggregate premium of the entire captive enterprise (including all its series) and treat such entire enterprise, for premium tax purposes, as a single entity. Thus, for example, unlike a segregated captive cell that separately is subject to Delaware's minimum annual premium tax, a separate series (of either a DSST or a Delaware serialized LLC) isn't so separately subject. This is a particular benefit, as Franklin recognizes, for a start-up captive, enabling it to preserve, rather than expend, additional capital, especially during the early stages of its business.

Business flexibility: Seventh, the DSST structure can accommodate business expansion in several ways. While certain ReMan enterprise risks initially will be covered by this new DSST captive, the DSST can be expanded—by creating additional series thereunder—to accommodate other ReMan risks, should Franklin's family so desire. In addition, should the Astutewick family wish to venture into new businesses, it may want to consider utilizing this new DSST captive to insure certain enterprise risks associated with those new ventures. Nelia, for example, has expressed an interest in starting a private alternative energy services business after she "retires" from her current public company. If she does, Nelia would like to captively insure, through this DSST captive, some of her new business risks.¹¹

Integrated Family Capital Planning
Like many of her counterparts in corporate America, Nelia, the COO of a public company, receives most of her executive compensation in non-cash form, namely, restricted 144 stock and nonqualified stock options

(NSOs). That non-cash compensation over the years now represents a substantial portion of her personal wealth. She hasn't taken time to prudently diversify, nor taken adequate planning measures to protect her holdings. Federal (and state) securities laws and her public company's policy have impeded diversification by allowing insiders like Nelia to sell or otherwise dispose of company securities (including NSOs) only during open window periods—usually the limited periods of time following earnings releases, that is, when material nonpublic information about the company's business is publicly disclosed. The current financial crisis and push for heightened scrutiny of executive compensation and insider trading have accentuated the need for Nelia to undertake proper planning with respect to her accumulated corporate wealth.

You discuss with Nelia her planning options to accomplish her objectives of asset protection, prudent diversification, tax saving and family wealth planning. Nelia also wants her plan to protect, and provide favorable federal transfer tax and state income tax treatment to (1) her beneficial ownership interest in the new DSST captive that she will be acquiring, and (2) her minority interest in the family business, ReMan. Nelia chooses to utilize a blind asset protection trust (BAPT) as a key component of her planning strategy, specifically desiring to create a Delaware BAPT to incorporate some of the unique Delaware advantages.

Customized BAPT: Here's how the Delaware BAPT works in Nelia's case. A BAPT is both a blind trust and an asset protection trust.¹² Blind trusts enable business executives to protect, diversify or otherwise manage their public company stock holdings and/or NSOs without being restricted by window periods and without committing insider trading or breaching corporate fiduciary duty.¹³ In the private sector, a blind trust typically involves the entrustment by a business person of personal investment assets (such as restricted 144 company stock and NSOs) with an independent (usually corporate) trustee who manages and otherwise disposes of those assets without the insider's participation, influence or knowledge.

A distinguishing feature of this kind of trust is its "mutual blindness" (a sort of gag order included in the governing trust instrument): the insider (here, Nelia) doesn't communicate any information about her company to, or attempt to influence the activities of, the independent trustee; similarly, the trustee

doesn't communicate to the insider-settlor, in advance or contemporaneously, any information about its investment decisions or trust activities. As the trustee doesn't receive any inside information or influence from the executive in administering the blind trust, the trustee's sales or other management of the trust assets (here, Nelia's restricted stock and NSOs) can't be based upon material nonpublic information, thereby avoiding illegal insider trading. As a properly created and administered blind trust, Nelia's Delaware BAPT can accomplish her desired diversification in compliance with federal and state securities laws and good corporate governance practice.

Nelia's Delaware BAPT also is an asset protection trust. Only 12 states, including Delaware, currently offer asset protection trust structures. Popular among execu-

In our example, Nelia will be able to monetize, diversify and protect the value of her restricted stock holdings, along with her NSOs, without being constrained by the open window periods of her alternative energy company.

tives, government officials, physicians and other professionals exposed to potential liability claims and litigation risk, an asset protection trust in the United States is a self-settled spendthrift trust established in accordance with applicable state statutes. It's intended to protect assets placed in such trust against creditor claims (subject to certain statutory exceptions and limitations) while giving the settlor the ability to retain an interest therein. To meet the basic requirements of Delaware's statutes (the Qualified Dispositions in Trust Act¹⁴), Nelia's BAPT is structured, among other things, to be irrevocable, contain a spendthrift clause, appoint a Delaware trustee of Nelia's choosing and provide for Delaware law to govern.

Professional capital management: Nelia's Delaware BAPT also will be customized to meet her other objectives.

First, as Nelia desires professional asset management of her trust assets, on an “open architecture” basis, by a financial advisor other than her BAPT’s trustee, her Delaware BAPT will be structured as a Delaware direction trust. (Only several states, including Delaware, offer “direction” trust structures.¹⁵) This means that the responsibility for investment management of the trust’s assets will be assigned to the separate financial advisor (who also must be bound by the “mutual blindness” requirements of the BAPT) while the responsibility for the administration of the trust, other than investment management, will rest with the BAPT’s blind trustee.

Financial strategies: Second, Nelia will be able to pursue several desired financial strategies through the use of her customized Delaware BAPT for her current and future holdings:

- monetization of an initial tranche of her restricted stock placed in the BAPT;¹⁶
- immediate equity diversification of another tranche of stock by subscription of that stock to an exchange fund (typically an investment partnership offered by major investment firms whereby qualified investors exchange their respective single-company stock for a proportional interest in the partnership’s diverse basket of securities);
- value protection of a certain amount of retained stock holdings with a hedging strategy independently selected by the trust’s direction advisor (such as a costless collar or prepaid forward arrangement); and
- gradual sell-and-reinvest diversification of additional restricted stock placed in her Delaware BAPT, as well as an exercise-sell-and-reinvest strategy for her NSOs.

In short, Nelia will be able to monetize, diversify and protect the value of her restricted stock holdings, along with her NSOs, without being constrained by the open window periods of her alternative energy company.

State income tax advantages: Third, Nelia’s BAPT will be structured as a nongrantor trust for income tax purposes because she wants to save state income tax by utilizing the Delaware tax advantage. Delaware doesn’t impose any state tax on the accumulated

income or recognized capital gains of an irrevocable Delaware trust where the remainder beneficiaries aren’t Delaware residents.¹⁷ Recall that Nelia, Franklin and their three adult children are non-Delaware state residents. To qualify as a nongrantor trust for income tax purposes, Nelia agrees that her BAPT should be structured so that discretionary distributions to her and her husband from the trust will require the approval of their oldest adult child (an adverse party for tax purposes). All three of Nelia’s and Franklin’s adult children, as well as their two grandchildren, also are named beneficiaries in her BAPT in accordance with her integrated family wealth plan. Structured this way, Nelia’s BAPT is an irrevocable nongrantor trust; as such, the BAPT’s income and capital gains will not be subject to Delaware income tax.

Estate planning: Fourth, as part of her family wealth planning, Nelia wants to exclude the assets placed in her Delaware BAPT from her taxable estate. Note that the Economic Growth and Tax Relief Reconciliation Act of 2001 temporarily repealed the federal estate tax and generation-skipping transfer (GST) tax as of January 2010. That Act provides that those taxes will be restored in 2011, unless Congress takes contrary action. If Congress takes no further action, the federal estate tax, for example, will be restored and the top effective federal estate tax rate will revert in 2011 to 55 percent. For purposes of this article, we will assume that both federal estate tax and GST tax exist. Accordingly, among other things, her Delaware BAPT will not include Nelia’s reservation of a special testamentary power of appointment. The resulting benefit in Nelia’s case will be the exclusion of her BAPT assets from her taxable estate and the consequential saving of substantial federal estate tax, thereby preserving more capital to be transferred to her desired family beneficiaries.

Additional family capital planning: Fifth, Nelia can use her Delaware BAPT for her other assets. Nelia owns a minority equity interest in the Astutewick family’s business, ReMan, which was smartly organized as a Delaware LLC. As part of her family capital planning, Nelia wishes to transfer these minority LLC interests into her Delaware BAPT. By doing so, she not only will provide an additional layer of asset protection around those interests, but also will be able to reduce her federal gift tax liability on that transfer through the use of valuation discounting (for noncontrolling and illiquid

interests). She also will be able to exclude those assets, placed into her BAPT, from her eventual taxable estate, thereby preserving more capital for her desired family beneficiaries.

Other transfer tax advantages: Sixth, desiring to exempt her BAPT from the federal GST tax (which was 45 percent prior to its temporary repeal noted above), Nelia creates her Delaware BAPT as a perpetual or dynasty trust. Among only 18 states to do so, Delaware has repealed the rule against perpetuities for personal property, allowing the creation of dynasty trusts. One practical, capital preserving advantage of a dynasty trust is to permit the settlor the opportunity to properly save GST tax. **As a dynastic Delaware BAPT, Nelia's trust assets will be exempt from GST tax.** (See “International Planning,” this page, for information on how non-resident alien families may have similar opportunities with a Delaware dynasty trust.)

International Planning

Nonresident alien families have similar opportunities


For families with international reach, there may be similar planning opportunities with a Delaware dynasty trust. Let's assume that Nelia and Franklin are instead nonresident aliens (that is, neither residents nor citizens of the United States) owning investments located in the United States (for example, company securities) and that their adult children are U.S. residents. In that case, although Nelia and Franklin generally wouldn't be subject to U.S. federal income taxation, they would be subject to U.S. federal transfer taxation (namely, federal gift, estate and generation-skipping transfer (GST) tax) with respect to transfers of their U.S. located property to their family members in the United States. However, a Delaware dynasty trust, like Nelia's blind asset protection trust (BAPT), offers a solution: If Nelia, for example, establishes during her lifetime an irrevocable Delaware dynasty trust (like the Delaware BAPT) to benefit her U.S. resident children and funds that trust with intangible property located in the United States (such as her U.S. company stock or other securities) during her lifetime, those transfers will be exempt from otherwise applicable federal gift tax and GST tax, as well as from federal estate tax (which, of course, applies to transfers made upon death, not during one's lifetime). Depending on the country in which Nelia and Franklin are personally domiciled in this alternative hypothetical, that U.S. federal transfer tax exemption may be subject to an international tax treaty, if the United States has such with that domiciliary country.

— Edmond M. Ianni

Furthermore, as Nelia will acquire a beneficial ownership interest in the new DSST captive, she wants to include that interest (a personal property interest) in her Delaware BAPT. Consequently, that beneficial ownership interest transferred into her BAPT similarly will enjoy asset protection, GST tax exemption and estate tax exclusion as well as receive favorable state income tax treatment.

Additional DSST Interest Planning

Franklin already has implemented a tax advantaged wealth management plan for his other assets, including his partial equity interest in ReMan (that he transferred, on a discounted basis, to his GST tax-exempt family trust, utilizing his annual gift tax exclusions). He now needs to plan for the small beneficial ownership interest that he'll acquire in the new DSST captive. With a comprehensive plan in place already, Franklin desires to simply shield from probate his new DSST beneficial interest. Accordingly, he intends to place that asset into his revocable living trust, fully knowing that such asset will not be excluded from his taxable estate. By doing so, however, that asset will not be probatable property and, therefore, will not be subject to the expense or delay of the probate process.

In summary, Nelia and Franklin Astutewick are able to utilize synergistically various Delaware advantages—captive, trust, tax, legal, asset protection, business entity, capital management, financial, regulatory, corporate governance and structural benefits—in customizing a business and family capital plan meeting their objectives. Those benefits, as part of an interdisciplinary and holistic plan, help them and their family business to preserve and manage precious capital effectively, especially in this challenging environment. These collectively unique Delaware advantages fortunately are as reachable as Highway 61 was to Georgia Sam and similarly can lead to desired refuge. 

—*This article is for informational purposes only and is not intended to provide, nor constitutes, investment, legal, tax, regulatory or other advice. Consult professional counsel regarding the matters contained herein and their application and suitability, if any, to one's own situation.*

Endnotes

1. See generally the Delaware Statutory Trust Act, 12 Del. C. Section 3801 *et seq.*
2. Captive insurance companies generally may take different legal forms. The chosen legal form often depends on the business objectives and risk management

needs of the client. For example, an association captive may be created to effectively self-insure an association's members (for example, an automobile association's, a trade association's or a small business association's members) against certain risks. Sometimes, for example, a captive may be created to include several divisions or "cells" therein to segregate, per cell, a defined basket of assets and liabilities (including risks). An automobile dealership owner, for example, may create a captive with four cells in which to place the property and casualty risks of his four dealerships respectively.

However, while 27 states and the District of Columbia have laws permitting the establishment of a captive insurance company in their domiciles, the use of a serializable legal entity is offered by only eight states. Those eight states are Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas and Utah. See, e.g., Glenn Warberg and Randall Hanson, "Series LLCs in Business and Tax Planning," *The Tax Adviser* (January 2010). Today, practitioners are increasingly turning to the serializable legal entity as a preferred form of captive insurance company in order to meet the risk and wealth management needs of clients. A statutory trust or a limited liability company (LLC) typically is the serializable entity of choice. Practitioners and clients now are increasingly looking to the serializable statutory trust or LLC for its greater structuring flexibility, governance simplicity, cost effectiveness and other comparative advantages over using a "cell" structure.

3. See *ibid.* The costs of establishing a captive vary according to its nature, size and complexity. For example, it's not uncommon for "start-up" costs to range from approximately \$25,000 to over \$70,000. For the small business wishing to establish a captive, it may find that it's more economical to associate with other similarly situated small businesses and cost-effectively establish a single captive for that group. There are federal income tax incentives for small businesses to establish captives for themselves; see, for example, Internal Revenue Code Sections 831(b), 501(c)(15) and 806.
4. See 6 Del. C. Section 18-1101(c).
5. See 12 Del. C. Section 3806(c).
6. Those selecting the serialized legal entity (that is, a serialized LLC or statutory trust) have said that they expect an operations and maintenance expense savings of 20 to 40 percent by using the serialized entity rather than using a multiple-celled captive structure.
7. See 26 U.S.C. Section 831(b).
8. See 18 Del. C. Section 6914(f).
9. See generally 18 Del. C. Section 6914. Generally, Delaware charges a captive insurance company an annual premium tax at the rate of (1) 2/10 of 1 percent on each dollar of direct premiums collected or contracted for, up to a maximum for the year of \$125,000 and (2) 1/10 of 1 percent on each dollar of assumed reinsurance premiums collected or contracted for, up to a maximum for the year of \$75,000.
10. Delaware law caps the annual premium tax at \$50,000 for a captive "that has 25 or more separate qualified individuals throughout a given tax year and that otherwise would be liable ... for [premium] tax for such year in an amount exceeding \$50,000 ..." 18 Del. C. Section 6914(h).
11. A family office may want to use a captive for other than insuring a family-owned business. For example, a family office may want to create a capital-preserving, tax advantaged captive to cover the deductible liability on its health

insurance plan and/or its errors and omissions liability.

12. For a more detailed overview of blind asset protection trusts, see Edmond M. Ianni, "Remove Temptation," *Trusts & Estates* (June 2003) at p. 42.
13. For an overview and more detailed discussion of blind trusts in both the private and public sectors, see Edmond M. Ianni, "Blind Trusts Offer Clients Customized Wealth Planning," *Estate Planning*, vol. 30, no. 7 (July 2003). For samples of private blind trust agreements, see Edmond M. Ianni, "Fiduciary Firewalls: A Look at Blind Trusts," 37th Annual Univ. of Miami Philip E. Heckerling Institute on Estate Planning (2003), Appendices B and C.
14. See generally the Delaware Qualified Dispositions in Trust Act, 12 Del. C. Section 3570 *et seq.*
15. Sixteen states and the District of Columbia currently allow a trust to be structured as a "direction" trust. Those states are Arkansas, Colorado, Delaware, Florida, Idaho, Maine, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, South Dakota, Tennessee, Virginia, Washington and Wyoming. See Daniel G. Worthington and Mark Merric, "Which Situs is Best?" *Trusts & Estates* (January 2010) at pp. 54, 64. If a client wishes to structure an asset protection trust as a "direction" trust, then the list of possibilities is reduced to seven states (which allow for both asset protection trust and direction trust structures): Colorado, Delaware, Nevada, New Hampshire, South Dakota, Tennessee and Wyoming.
16. Nelia's blind asset protection trust (BAPT) also will require the direction trust advisor to sell her securities in accordance with Rule 144 (under the Securities Act of 1933), a nonexclusive safe harbor permitting the sale of restricted securities or securities owned by persons controlling, controlled by or under common control with the issuer. As a blind trust structured in this way, Nelia's BAPT is intended to qualify for the affirmative defense to insider trading under Rule 10b5-1 (under the Securities Exchange Act of 1934).
17. See 30 Del. C. Section 1636.



SPOT LIGHT

Secret Plans—

"Loose Talk," a group of nine posters, each measuring about 20 by 14 inches, sold for \$1,320 at Swann Galleries annual auction of "Vintage Posters" in New York on Aug. 4, 2010.