



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 23, 1991

Gary O. Cohen, Esq.
Freedman, Levy, Kroll & Simonds
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Mutual Benefit Fund, File No. 2-36663
MBL Growth Fund, Inc., File No. 2-96199
MAP Government Fund, Inc., File No. 2-78975
The Specialty Managers Trust, File No. 33-23512
Mutual Benefit Variable Contract Account-7,
File No. 2-86722
Markston Investment Management, File No. 801-15894
Mutual Benefit Financial Service Company, File No. 801-8154
Directed Services, Inc., File No. 801-32675

Dear Mr. Cohen:

Enclosed is our response to your letters of August 2, 1991 and August 23, 1991. By incorporating our answer into the enclosed photocopies of your letters, we avoid having to recite or summarize the facts involved.

In any future correspondence on this matter, please refer to our Reference No. IP-3-91.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heidi Stam".

Heidi Stam
Assistant Chief
Office of Insurance Products
and Legal Compliance

[Pub. Avail.: Aug. 23, 1991]

Our Reference No. IP-3-91
Mutual Benefit Fund
File No. 2-36663
MBL Growth Fund, Inc.
File No. 2-96199
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The Specialty Managers
Trust
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Mutual Benefit Financial
Services Company
File No. 801-8154
Directed Services, Inc.
File No. 801-32675

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT


Based upon the facts and representations set forth in your letters of August 2, 1991 and August 23, 1991, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission against Mutual Benefit Fund, MBL Growth Fund, Inc., MAP Government Fund, Inc., The Specialty Managers Trust, Mutual Benefit Variable Contract Account-7, Markston Investment Management ("Markston"), Mutual Benefit Financial Service Company ("FISCO"), and Directed Services, Inc. ("DSI"), pursuant to Sections 2(a)(4), 15(a)(4) and 15(b)(2) of the Investment Company Act of 1940, if Markston, FISCO and DSI continue to perform under their respective investment advisory agreements and principal underwriting agreements without further interestholder vote. 1/

On July 16, 1991, the Superior Court of New Jersey entered an Order appointing the Commissioner of Insurance of New Jersey as Rehabilitator of Mutual Benefit Life Insurance Company. You note in your letter that there has been no sale or purchase of advisory or underwriting contracts in connection with the appointment of the Rehabilitator. Moreover, you state that the appointment of the Rehabilitator has not resulted in a change in the managing partners, directors or key management personnel of Markston, FISCO or DSI. Your letter dated August 23, 1991 states that the Superior Court of New Jersey, on August 7, 1991, entered

1/ The Division declines to express an opinion on whether the facts and circumstances presented by your letter would satisfy Rule 2a-6. See Investment Company Act Release No. 10809 (Aug. 6, 1979), note 5.

an Order Continuing Rehabilitator's Appointment, Continuing Restraints, and Granting Other Relief.

You should note that facts or conditions different from those presented in your letters might require a different conclusion. Further, this response only expresses the Division's position on enforcement action and does not purport to express any legal conclusions on the questions presented.

A handwritten signature in cursive script that reads "Michael V. Wible". The signature is written in dark ink and is positioned above the typed name.

Michael V. Wible
Staff Attorney
August 23, 1991

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August 2, 1991

1940 Act/2(a)(4)
1940 Act/15(a)(4)
1940 Act/15(b)(2)
1940 Act/Rule 2a-6

BY HAND DELIVERY

Mr. Clifford E. Kirsch, Esq.
Assistant Director
Office of Insurance Products &
Legal Compliance
Division of Investment Management
U.S. Securities and Exchange Commission
450 - 5th Street, N.W.
Room 10167, Stop 10-6
Washington, D.C. 20549

Re: Mutual Benefit Fund ("Benefit Fund")
File No. 811-2046 and No. 2-36663
MBL Growth Fund, Inc. ("Growth Fund")
File No. 811-3593 and No. 2-96199
MAP Government Fund, Inc. ("MAP Fund")
File No. 811-3548 and No. 2-78975
The Specialty Managers Trust ("Managers Trust")
File No. 811-5629 and No. 33-23512
Mutual Benefit Variable Contract Account-7 ("VCA-7")
File No. 811-3853 and No. 2-86722
Markston Investment Management ("Markston")
File No. 801-15894
Mutual Benefit Financial Service Company ("FISCO")
File No. 801-8154 and No. 8-15263
Directed Services, Inc. ("DSI")
File No. 801-32675 and No. 8-39104

Dear Mr. Kirsch:

We write, on behalf of the above-named companies, to request that the Commission staff furnish us with a letter stating that it

will not recommend that the Commission take enforcement action if Markston, FISCO and DSI continue to perform under their respective investment advisory agreements (including service and management agreements) and principal underwriting agreements (including distributor's and sales agreements), without further interestholder vote, under the highly unusual circumstances described below.

A. Companies

Benefit, Growth and MAP Funds are corporations registered as management investment companies under the Investment Company Act of 1940 (the "Act"). Managers Trust is a business trust registered as a management investment company under the Act.

VCA-7 is a separate account of The Mutual Benefit Life Insurance Company ("Mutual Benefit Life") registered as a management investment company under the Act. Mutual Benefit Life is a mutual life insurance company organized in New Jersey in 1845 and presently licensed to engage in the life insurance business in all 50 states, the District of Columbia and Puerto Rico.

Markston is a general partnership, 51% of the interests in which are indirectly owned by Mutual Benefit Life. FISCO and DSI are both wholly-owned indirect subsidiaries of Mutual Benefit Life.

Markston, FISCO and DSI are investment advisers registered under the Investment Advisers Act of 1940. FISCO and DSI are also broker-dealers registered under the Securities Exchange Act of 1934. Markston is investment adviser for Benefit and Growth Funds. FISCO is investment adviser for MAP Fund and VCA-7 and principal underwriter for Benefit, Growth and MAP Funds and VCA-7. DSI is investment adviser and principal underwriter for Managers Trust.

Mutual Benefit Life has entered into separate service agreements with Markston and FISCO regarding the Funds and VCA-7, pursuant to which it has agreed to provide, to the extent needed by each entity, the personnel, office space and other resources necessary for the proper conduct of each company's business.¹ Mutual Benefit Life organized, and/or holds interests in, each of the Funds, Managers Trust and VCA-7.

¹Each entity utilizes the support services of Mutual Benefit Life to different degrees on a cost reimbursement basis. In the case of a disagreement as to the fair basis for allocating cost, such basis shall be fixed by the entity's independent auditors. Any employee of Mutual Benefit Life, while performing services for any such entity, shall report and be responsible solely to the officers and directors of the entity utilizing the services. Each entity maintains its own officers and related facilities and has sufficient staff and resources to meet its respective contractual obligations.

B. Rehabilitation Order

On July 16, 1991, the Superior Court of New Jersey entered an Order (the "Order") (copy enclosed) appointing the Commissioner of Insurance of New Jersey as Rehabilitator of Mutual Benefit Life ("Rehabilitator") (paragraph (2)).² The Order grants the Rehabilitator "immediate exclusive possession and control of, and title to, the business and all of the assets, contracts, causes of action, books, records, bank accounts, certificates of deposit, funds, securities or other funds and all real or personal property of any nature of Mutual Benefit [Life]" (paragraph (4)). The Order directs the Rehabilitator to conduct the business of Mutual Benefit Life and to take such steps as he may deem appropriate toward removing the cause and conditions that have made rehabilitation necessary (paragraph (5)).

The Order contemplates Mutual Benefit Life will continue in business (see paragraph (5)) and restrains policy loans and surrenders (paragraph (15)) in order to enable Mutual Benefit Life to continue in business. The Order is "not [to] be deemed a declaration of insolvency" (paragraph (16) (emphasis added)) and does not authorize the Rehabilitator to transfer control of, "demutualize," reorganize or liquidate Mutual Benefit Life.

²All references to paragraphs are to paragraphs of the Order.

The Order does not address the businesses that Mutual Benefit Life conducts through subsidiaries, such as the businesses of serving as investment advisers and principal underwriters to investment companies. The Order does not address the Funds, Managers Trust, VCA-7, Markston, FISCO or DSI or their advisory and underwriting agreements. Indeed, the Order contemplates that Mutual Benefit Life will continue unaffected the investment company business of VCA-7, and distinguishes it from Mutual Benefit Life's non-securities related insurance business by providing for the continuation of payments on separate accounts in connection with variable annuities (paragraph (15)).

C. Questions Raised

Sections 15(a)(4) and (b)(2) of the Act³ require, in effect, that advisory and underwriting agreements provide, in substance, for their automatic termination in the event of assignment. Each of the agreements involved here so provides.

Section 2(a)(4) of the Act defines "assignment" to include "any direct or indirect transfer or hypothecation of a contract

³All references herein to sections and rules are to sections of the Act and rules thereunder.

. . . by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor." Rule 2a-6 provides that a transaction that "does not result in a change of actual control or management of an investment adviser or principal underwriter" is not an assignment for purposes of Section 15(a)(4) or (b)(2).

The question arises whether the appointment of a Rehabilitator for Mutual Benefit Life, the indirect parent of Markston, FISCO and DSI, would be deemed to constitute an indirect transfer or hypothecation of the advisory and underwriting agreements, or to result in a change of actual control or management of Markston, FISCO and DSI, that causes each of the agreements to terminate. A further question arises whether, under all of the circumstances, the Funds, Managers Trust and VCA-7 should be required to solicit interestholder approval of new agreements.

D. Our View

We do not believe that the appointment of the Rehabilitator should be deemed to constitute an assignment of the advisory and underwriting agreements so as to cause them each to terminate.

We also do not believe that, even if the appointment of the

Rehabilitator could be deemed to constitute such an assignment, the interestholders of the investment companies should be required to vote on new advisory and underwriting agreements.

Instead, we believe that the advisory and underwriting agreements, including the obligations of all of the parties thereunder, should be deemed to have continued in force without interruption from the date of the Order.

The Commission has formally noted that the staff has provided no-action assurances in this regard.⁴ We request such assurance on the basis set out below.

E. Basis for View

1. Basis for No Assignment

a. The appointment of the Rehabilitator does not constitute an "assignment" within the literal terms of Section 2(a)(4).

The Order, as described in B. above, appoints a Rehabilitator and gives the Rehabilitator title to the business, assets and

⁴See SEC Release No. IC-10809 (Aug. 6, 1979) (proposing the adoption of Rule 2a-6).

contracts of Mutual Benefit Life. The appointment, however, does not constitute an "assignment" of the advisory and underwriting agreements within the literal terms of Section 2(a)(4).

Section 2(a)(4) contemplates assignment through transfer or hypothecation of a contract *by an assignor*.⁵ However, neither Markston, FISCO, DSI nor Mutual Benefit Life literally transferred or hypothecated any contractual right that it holds.⁶ The Rehabilitator obtained title to the business, assets and contracts of Mutual Benefit Life by court order,⁷ pursuant to the New Jersey insurance law,⁸ and not by transfer or hypothecation by Mutual Benefit Life or its subsidiaries as assignors.

Section 2(a)(4) also contemplates assignment through transfer or hypothecation of a controlling block of the assignor's

⁵Likewise, the proscriptions against assignment contained in Section 15 were intended to make clear that "the management contract is personal, that it cannot be assigned, and that you cannot turn over the management of other people's money to someone else." *Investment Trusts and Investment Companies: Hearing on S.3580 Before a Subcomm. of the Senate Comm. on Banking and Commerce, 76th Cong., 3d Sess. (1940)* (statement of David Schenker, Chief Counsel, SEC) (emphasis added).

⁶On the contrary, the Order directly enjoins "all persons, corporations, partnerships, associations and all other entities, wherever located" from "transferring, selling . . . terminating, cancelling . . . or assigning any . . . contracts . . . of any nature of Mutual Benefit [Life]" (paragraph (12)).

⁷See, *infra*, note 16.

⁸See, *infra*, note 27 and accompanying text.

outstanding voting securities by the assignor. Mutual Benefit Life, a mutual life insurance company, is owned, and continues to be owned, by its policyholders.⁹ The policyholders literally did not transfer or hypothecate a controlling block of the policies that they hold. Furthermore, Mutual Benefit Life did not transfer or hypothecate any controlling block of the outstanding voting securities of Markston, FISCO or DSI that it holds.

The appointment of the Rehabilitator, therefore, does not constitute an assignment within the literal terms of Section 2(a)(4).

b. In economic reality, the appointment of the Rehabilitator does not constitute an assignment contemplated by the Act.

Congress and the courts have established that definitions under the federal securities laws should be applied in a flexible manner consistent with economic reality.

The preamble to the definitions in Section 2 states that the definitions apply "unless the context otherwise requires." The courts, in order to avoid wooden and unrealistic results, have

⁹Policyholders have a statutory right to vote and receive dividends. N.J. Stats. Ann. §§17B:18-13 and 17B:18-46 (West 1985). See 18 Appleman, *Insurance Law and Practice*, §10046, at 98, §10059, at 147-8 (1945). See also, paragraph (10) of the Order.

interpreted such language to distinguish between that which Congress intended to include and intended to exclude under the federal securities laws.¹⁰ The courts have fashioned a flexible analytical approach that looks to economic reality for determining when definitions should apply.

The Commission also has recognized the concept of economic reality in its administration of Section 2(a)(4) by adopting definitional Rule 2a-6. The Rule provides that a transaction that falls within the definition of "assignment" under Section 2(a)(4), nevertheless, would be deemed not to terminate advisory and underwriting agreements, if -- in economic reality -- the transaction does not result in a change of actual control or management.¹¹

¹⁰See, e.g., *United Housing Foundation, Inc. v. Forman*, 431 U.S. 837, 848 (1975), *Exchange National Bank of Chicago v. Touche Ross, & Co.* 544 F.2d 1126, 1138 (2d Cir. 1976); *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551 (1979).

¹¹The Commission, in proposing Rule 2a-6, explained its rationale as follows:

The term "assignment" is defined in section 2(a)(4) of the Act . . . to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. From time to time, an investment adviser or principal underwriter to an investment company may be involved in certain transactions -- particularly, modifications of corporate structure -- which may be considered to involve a direct or indirect transfer of a controlling block of the investment adviser's voting securities, *but which would not affect the actual control or management of the investment adviser.* Absent proposed rule 2a-6, such a transaction might be viewed as an assignment
(continued...)

Assuming arguendo that the appointment of the Rehabilitator could fall within the definition of "assignment" under Section 2(a)(4), the appointment does not -- in economic reality -- result in a change in actual control or management of Markston, FISCO or DSI.¹² Accordingly, Rule 2a-6 defines the scope of Section 2(a)(4) to exclude the appointment of the Rehabilitator.

The appointment of the Rehabilitator has not resulted in any change in actual control or management of Markston, FISCO or DSI.¹³ On the contrary, the managing partners of Markston and the board

¹¹(...continued)
within the meaning of section 2(a)(4) for purposes of terminating automatically the investment advisory contract or an underwriting contract with the investment company.

Nonetheless, such a transaction would not contain any of the abusive elements which Congress would have considered to be trafficking in investment advisory or underwriting contracts. Moreover, where there is no change in the actual control or management of the investment adviser or principal underwriter -- and, hence, the actual management of the investment company -- as a result of the transaction, the transaction would not appear to conflict with the Congressional concerns embodied in the Act. SEC Release No. IC-10809 (Aug. 6, 1979) (proposing the adoption of Rule 2a-6) (emphasis added, footnote omitted).

¹²Alternatively, it could be argued that a change in control or management of *Mutual Benefit Life*, solely for purposes of rehabilitation, would not be deemed to result in a change in control or management of *Markston*, *FISCO* and *DSI*, subsidiaries of *Mutual Benefit Life*, that, in turn, would constitute an assignment of the advisory and underwriting agreements.

¹³*Cf.*, e.g., *Templeton Investment Counsel Ltd.*, SEC No-Action Letter (Jan. 22, 1986) (control at all times of reorganization remained with same individual).

of directors of FISCO and of DSI continue to consist of the same persons as prior to the issuance of the Order. Moreover, the day-to-day control of the operations of Markston, FISCO and DSI continues to reside in the key management personnel of such companies as it did prior to the issuance of the Order.¹⁴ In this regard, Markston, FISCO and DSI have each advised its investment companies that it knows of no present intention to change key management personnel. Moreover, as noted in Part A. above, the Order does not require that any personnel changes be made in Markston, FISCO or DSI.¹⁵

The appointment of the Rehabilitator also has not resulted in a change in actual control or management of Mutual Benefit Life.¹⁶

¹⁴The practice of the industry and the Commission staff has been to conclude that a transaction does not result in a change in management where there is no change in key management personnel. See, e.g., *The Equitable Life Assurance Society of the United States*, SEC No-Action Letter (Dec. 12, 1983) (request represented that "the advisory services will continue to be provided by the same professional staff and in the same manner"); *L.F. Rothschild Earnings and Liquidity, Inc.*, SEC No-Action Letter (Jan. 24, 1983) (request represented that "the operating and management personnel . . . will remain the same"); *Smith Barney & Co., Inc.*, SEC No-Action Letter (Feb. 16, 1976) (request represented that "no change in personnel or policy of Smith Barney's investment management department . . . will result").

¹⁵Of course, subsequent changes in the circumstances of Mutual Benefit Life or its subsidiaries, pursuant to additional court orders or otherwise, may eventually result in a change in actual control or management.

¹⁶Recently, the Commission did not deem the court appointment of a trustee, with "full power, duty and authority to manage and administer the business affairs and assets" of an investment (continued...)

The Order specifically authorizes the Rehabilitator to keep Mutual Benefit Life's "current management personnel" (paragraph (21)) to conduct Mutual Benefit Life's business. Indeed, although the Board

¹⁶(...continued)

company, to constitute a transfer of advisory and underwriting agreements within the meaning of Section 2(a)(4). *William Penn Interest Income Fund* (File No. 33-39645) (Pre-Effective Amendment No. 3 at 8, filed on June 14, 1991, to Registration Statement on Form N-14) (Commission files show no shareholder vote in connection with appointment of trustee). The Commission has, however, stated in the past that "transferring actual control or management to a receiver would constitute an assignment." SEC Release No. IC-11005 (Jan. 2, 1980) (emphasis added) (adoption of Rule 2a-6); see also Waddell & Reed, SEC No-Action Letter (March 12, 1976).

In this context, it is unclear what the Commission intended by the term "receiver." The federal Bankruptcy Code, for example, envisions liquidations as well as reorganizations being administered by a "trustee" and not a "receiver." See, e.g., 11 U.S.C. §105 (1978). Indeed, "receivers" commonly refer to persons consolidating assets where a party is incompetent to properly apply them. See Black's Law Dictionary (4th ed. 1957). The term is less apt where, as here, there has been no insolvency and Mutual Benefit Life's corporate existence and activities continue in an effort to restore and reinstate it to its former condition of successful operation (see paragraph (5)).

The New Jersey insurance law applicable here reflects this same distinction between rehabilitation and insolvency or liquidation. Chapter 32 of Title 17B of the New Jersey insurance laws is entitled "Rehabilitation and Liquidation." N.J. Stats. Ann. §17B:32-1 et seq. (West 1985 and 1991 Suppl.). The action instituted by the Commissioner of Insurance is one of rehabilitation, not insolvency or liquidation. See, *infra*, footnote 27. See also paragraph 16 of the Order.

In addition, the New Jersey insurance law distinguishes a rehabilitator from a receiver. Specifically, while the word "receiver" is used generically in several sections of the New Jersey law, its actual meaning may be "receiver, liquidator, rehabilitator or conservator as the context may require." N.J. Stats. Ann. §17B:32-1(k) (West 1985) (emphasis added). The appointment of a "rehabilitator," therefore, is distinguishable from the appointment of a "receiver" in a context other than rehabilitation.

of Directors of Mutual Benefit Life has resigned, the actual day-to-day control or management continues as it did *prior* to the issuance of the Order.¹⁷

In addition, although the Order provides that the Rehabilitator has possession and control over the business and assets of Mutual Benefit Life for purposes of rehabilitation (paragraph (4)), as a mutual insurance company organized in New Jersey, Mutual Benefit Life has always been subject to the comprehensive supervision of the Commissioner of Insurance under the New Jersey insurance law.¹⁸

Indeed, the Commissioner of Insurance, as Rehabilitator, is exercising many of the same powers that were available to him *prior*

¹⁷Although the President of Mutual Benefit Life, Henry E. Kates, stepped down from that position, he has agreed to be employed as a consultant for a period of up to six months (see page 14 of the Order). Furthermore, he was succeeded by Stephen J. Carlotti, who, prior to Mr. Kates' resignation, was the Senior Executive Vice President (see page 14 of Order) and Chief Operations Officer of Mutual Benefit Life since 1989. In addition, Mutual Benefit Life's Executive Vice Presidents Edward M. Bull, Robert R. Budwick, and Donald R. Sondergeld, and Senior Vice Presidents Donald F. Haller, Jr. and Charles G. McCaig, have each agreed to remain with Mutual Benefit Life for a period of up to twelve months (see page 14 of the Order).

¹⁸Mutual Benefit Life has operated, and continues to operate, as an insurer pursuant to authority granted by the Commissioner of Insurance. N.J. Stats. Ann. §§17B:17-11.a. and 17B:17-12.a. (West 1985). As a New Jersey insurer, Mutual Benefit Life has been, and continues to be, required to abide by all applicable provisions of the New Jersey insurance law, which is administered by the Commissioner of Insurance. N.J. Stats. Ann. §§17B:17-13 and 17:1C-6 (West 1985).

to the issuance of the Order. Prior to the issuance of the Order, the Commissioner of Insurance had the power to impose reasonable and temporary restrictions upon the type, class or permissible extent of investments that may be made by Mutual Benefit Life, if it appeared to the Commissioner that by reason of investment conditions generally or the financial condition or investment portfolio content of Mutual Benefit Life (giving due regard to policyholders' protection afforded by its capital, surplus and reserves) the safety of the public or policyholders warranted such restrictions.¹⁹

In addition, the Commissioner of Insurance, prior to the issuance of the Order, had the power to require Mutual Benefit Life to dispose of any specific real estate acquired by it, after a hearing and a determination that the interest of the policyholders so required.²⁰ Moreover, the many aspects of the operations of Mutual Benefit Life had been, prior to the issuance of the Order, subject to the oversight of the Commissioner of Insurance, including, among other things: changes in organization,²¹ reinsurance arrangements,²² valuation of reserves,²³ and the ability to provide any consultative, administrative, investment, actuarial, loss

¹⁹N.J. Stats. Ann. §17B:20-6 (West 1985).

²⁰N.J. Stats. Ann. §17B:18-45 (West 1985).

²¹N.J. Stats. Ann. §§17B:18-57, 18-58, and 18-61 (West 1985).

²²N.J. Stats. Ann. §§17B:18-64 (West 1985).

²³N.J. Stats. Ann. §§17B:19-2 (West 1985).

prevention, data processing, accounting, claims and collection services, independent of any insurance or annuity contract.²⁴

In sum, the appointment of the Rehabilitator did not constitute a transfer or hypothecation of the advisory or underwriting agreements, or of a controlling block of the outstanding voting interests or securities of Mutual Benefit Life, Markston, FISCO or DSI, within the literal terms of Section 2(a)(4). Assuming arguendo that the appointment of the Rehabilitator could have constituted an assignment under Section 2(a)(4), the appointment == in economic reality == has not resulted in a direct or indirect transfer of actual control and has not resulted in any change in key management personnel of Markston, FISCO or DSI. Accordingly, under Rule 2a-6 the appointment of the Rehabilitator does not fall within the definition of "assignment" in Section 2(a)(4).

²⁴N.J. Stats. Ann. §§17B:18-43 (West 1985).

2. Basis for No Shareholder Vote

a. Congress has provided that the Act shall be interpreted in a flexible manner so as to mitigate or eliminate conditions that adversely affect the interest of investors.

Section 1 declares that the Act "shall be interpreted" in accordance with its policy and purposes, which are to mitigate and, so far as feasible, eliminate the conditions enumerated in the Section which adversely affect the national public interest and the interest of investors. Section 1(b)(6) declares that such adverse effects can arise when the control or management of investment companies is transferred "without the consent of security holders."

Presumably, the Act need not be interpreted to apply where an assignment did not present the abuses that the Act is intended to eliminate. Indeed, as shown above, the Commission has adopted Rule 2a-6 defining "assignment" to exclude transactions that do not present such abuses.²⁵

²⁵See, *supra*, note 11.

b. Assuming that the appointment of the Rehabilitator could be deemed to constitute an assignment, no interestholder vote should be required because the assignment does not present the abuses that the Act is intended to eliminate.

The legislative history of Section 1(b)(6) shows that Congress was concerned with "the widespread 'trafficking' in advisory and underwriting contracts prior to 1940, whereby frequent changes in investment company managements took place without the consent, and sometimes even without the knowledge, of the public security holders."²⁶ The requirement that advisory and underwriting agreements provide for termination on their assignment was one of the remedies Congress adopted to eliminate the abuses growing out of these practices.

The appointment of the Rehabilitator does not present any of the abuses associated with trafficking in agreements. On the contrary, the appointment of the Rehabilitator was made for the purpose of removing the cause and conditions that have made rehabilitation necessary.²⁷

²⁶Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 150 (1966).

²⁷The rehabilitation process was commenced pursuant to Section 32-6(k) of Title 17B of the New Jersey insurance law, with the consent of the Board of Directors of Mutual Benefit Life. N.J. Stats. Ann. §17B:32-6(k) (West 1985). See also paragraphs (1) and (continued...)

The Rehabilitator is the Commissioner of Insurance of New Jersey, who is charged, under the insurance law of New Jersey, with the supervision of Mutual Benefit Life. In connection with the appointment of the Rehabilitator, there has been no sale or purchase of advisory or underwriting contracts.²⁸ In addition, the appointment of the Rehabilitator has generated no finder's fee or commission or other pecuniary gain to any company or individual person, particularly any amount that could be recouped from the investment companies to the disadvantage of shareholders.²⁹ Moreover, the Rehabilitator was appointed by the Superior Court of New Jersey and is responsible, on his official bond, for the proper administration of all assets coming into his possession or control.³⁰ The appointment of the Rehabilitator also has not resulted in a change in the managing partners, directors or key

²⁷(...continued)
(5) of the Order. Notably, the rehabilitation process was not commenced on the basis of insolvency or any deficiency, as otherwise provided for by the New Jersey insurance law. See N.J. Stats. Ann. §17B:32-6(a) through (j) and (l) (West 1985). See also paragraph (10) of the Order.

²⁸See, *supra*, Part E.1.a. See generally *Report of the Securities and Exchange Commission on Investment Trusts and Investment Companies*, H.R. Doc. No. 279, 76th Cong., 1278-1303 (1940) (hereinafter, "SEC Report to Congress").

²⁹Such recoupment of finder's fees was one of the abuses existing at the time Section 1(b)(6) was adopted. *Id.*

³⁰N.J. Stats. Ann. § 17B: 32-15.d. (West 1985). Self-dealing was one of the abuses existing at the time Section 1(b)(6) was adopted. See generally SEC Report to Congress at 1029-1031, 1086-1089, 1092-1093, 1363-1366 and 1918-1936.

management personnel of Markston, FISCO or DSI.³¹

Furthermore, the appointment of the Rehabilitator is certainly no secret to the interestholders of the investment companies. The newspapers, radio and television have given prominent and widespread publicity to the appointment. Each of the investment companies has distributed to existing interestholders a supplement to its current prospectus disclosing the appointment.³² Interestholders will continue to have the right to redeem their interests if they so choose.³³

c. A proxy statement seeking approval of new advisory and underwriting agreements would be problematic.

The unusual situation presented by the appointment of the Rehabilitator is still quite fluid and the disclosure required to be included in a proxy statement could quickly become outdated - - requiring revised proxy material -- as the situation develops further. In addition, the disclosure of the appointment of the

³¹See, *supra*, note 5.

³²See file numbers for the investment companies, *supra*, page 1 of this letter.

³³The Order specifically provides that separate account interestholders continue to have the right to redeem (paragraph (15)). Mutual Benefit Life is seeking confirmation that variable life insurance policyholders continue to have a right to redeem. The right of redemption with respect to shares of the Funds and the Trust continues under the federal securities laws.

Rehabilitator as constituting an assignment of the existing agreements that could result in their termination is a highly technical argument that may confuse the interestholders. Certainly, the significance of any technical assignment will be difficult for interestholders to grasp where the key management personnel of Markston, FISCO and DSI remain the same and where the agreements themselves have not changed. Finally, it may be difficult for interestholders to grasp the consequences of a negative vote on new agreements where such a vote would not cause the Rehabilitator to be removed.

Moreover, assuming the interestholders approve new advisory and underwriting agreements with Markston, FISCO and DSI, the subsequent completion of the rehabilitation process could, arguably, result in another technical assignment of the agreements, thereby requiring another proxy solicitation, which could further confuse interestholders.

The investment companies emphasize that a solicitation of interestholder approval of new agreements could also precipitate mass redemptions with adverse consequences for not only the investment companies, but also the interestholders. Such consequences could include immediate disposition of portfolio investments to generate cash redemption proceeds, dislocation of investment programs and higher expense ratios for remaining

shareholders. Mutual Benefit Life's situation received widespread publicity which, unfortunately, precipitated a "run on the bank."³⁴ The investment companies, while mindful of their obligations to redeem, respectfully submit that a proxy statement describing a highly technical termination of advisory and underwriting agreements could, under the uncertain circumstances here, contribute to thoughtless and needless redemptions that would not be in the best interests of the investment companies or their interestholders.

In sum, Congress intended the Act to be interpreted flexibly to mitigate or eliminate conditions adversely affecting the interest of investors. Accordingly, even assuming that the appointment of the Rehabilitator constitutes an assignment, no interestholder vote should be required in the present situation, which presents none of the abuses that the Act is intended to eliminate.

Notably, there has been no purchase or sale of any advisory

³⁴The Newark Star Ledger, July 17, 1991, at 34, col. 3, reported that Samuel Fortunato, Commissioner of Insurance of New Jersey, "said that a recent spate of adverse publicity concerning the company's problems in commercial real estate had compounded its problems by frightening some customers and fueling a run of redemptions."

or underwriting agreement in connection with the appointment of the Rehabilitator. Moreover, the appointment has generated no finder's fees or other commissions that could be recouped from the investment companies. In addition, the Rehabilitator is responsible for the proper administration of the assets of Mutual Benefit Life.

Finally, there has been adequate disclosure of the appointment of the Rehabilitator to the interestholders. Any proxy solicitation regarding the appointment would necessarily be problematic given the highly unusual circumstances presented and could lead to mass redemptions.

F. Conclusion

For the foregoing reasons, we respectfully submit that the Commission staff should grant the no-action relief requested.

This letter follows up several conversations we have had with the staff concerning this matter. We raised this matter with the staff prior to the issuance of the Order.

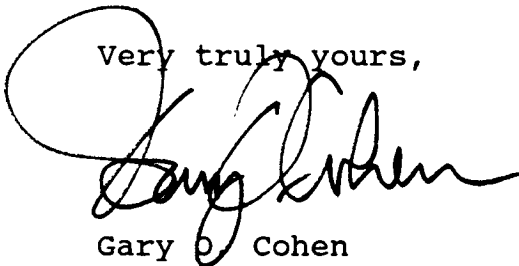
We are addressing this letter to you, because one of the investment companies is a life insurance company separate account and three of the five mutual funds offer their shares exclusively

to life insurance company separate accounts.

This letter is based on what we understand from representatives of the companies involved. We have not conducted any independent inquiry. We note that the Superior Court of New Jersey could modify the Order. Representatives of the companies would be happy to meet with you to answer questions and discuss this matter.

Please call me, Diane E. Ambler or Richard T. Choi at this firm if you have any questions or wish to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary Cohen". The signature is written in a cursive style with a large, looping initial "G".

Gary O. Cohen

GOC/cjc

Enclosures:

Order

Six copies of letter

cc: Heidi Stam, Esq.

Michael V. Wible, Esq.

FILED

JUL 16 1991

CHAMBERS OF
JUDGE PAUL G. LEVY

ROBERT J. DEL TUFO
Attorney General of New Jersey
Attorney for Plaintiff
R.J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
(609) 292-1506

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MERCER COUNTY
GENERAL EQUITY PART
DOCKET NO. C-91-00109

IN THE MATTER OF THE)	
REHABILITATION OF MUTUAL)	Civil Action
BENEFIT LIFE INSURANCE)	
COMPANY, a Mutual Insurance)	CONSENT ORDER TO SHOW CAUSE
Company of New Jersey.)	WITH TEMPORARY RESTRAINTS

This matter having been opened to the Court by Robert J. Del Tufo, Attorney General of New Jersey, attorney for plaintiff Samuel F. Fortunato, Commissioner of Insurance (hereafter "Commissioner"), with the consent of defendant Mutual Benefit Life Insurance Company (hereafter "Mutual Benefit"), by defendant's counsel Samuel C. Butler, Esq., of Cravath, Swaine and Moore, for an order pursuant to N.J.S.A. 17B:32-7(a) for the rehabilitation of Mutual Benefit, and it appearing to the court that the parties have consented to the commencement of delinquency proceedings by the Commissioner against defendant Mutual Benefit pursuant to N.J.S.A. 17B:32-6(k) and to the entry of an Order pursuant to N.J.S.A. 17B:32-7(a) directing the Commissioner to rehabilitate said

defendant, and it further appearing that a Consent Order for Rehabilitation is herewith submitted to the court in this matter, and the court having considered the papers and oral representations of the Attorney General and counsel for defendant and for good cause shown;

IT IS on this 16TH day of JULY, 1991 ORDERED as follows;

ORDER COMMENCING REHABILITATION

(1) Having consented through a resolution of its Board of Directors pursuant to N.J.S.A. 17B:32-6(k), Mutual Benefit shall in its existing form cease all operations on this 16TH day of JULY, 1991 effective at 3:00'clock in the AFTER noon. Effective at the same date and time, "Mutual Benefit Life Insurance Company in Rehabilitation" shall continue as successor the operations of the company, consistent with the terms of this Order and the terms of all subsequent Orders of this Court.

COMMISSIONER APPOINTED REHABILITATOR

(2) Pursuant to N.J.S.A. 17B:32-15(a), Samuel F. Fortunato, Commissioner of Insurance of the State of New Jersey and his successors in office are hereby appointed Rehabilitator of Mutual Benefit Life Insurance Company, and are vested, in addition to the powers set forth in this Order, with all the powers and authority expressed or implied under the provisions of N.J.S.A. 17B:32-1 et seq.

APPOINTMENT OF DEPUTY REHABILITATOR

(3) The Rehabilitator may appoint a consultant or other person to serve as Deputy Rehabilitator to assist the Rehabilitator in accomplishing the directives of this Order. The Deputy Rehabilitator shall serve at the pleasure of the Rehabilitator and, subject to the approval of the Rehabilitator, shall be entitled to exercise all of the powers and authorities vested in the Rehabilitator pursuant to this Order and to the applicable law. Compensation of the Deputy Rehabilitator shall be set by the Rehabilitator, subject to the approval of this court, and shall be paid out of the funds and assets of Mutual Benefit. The Deputy Rehabilitator shall have no personal liability for his acts or omissions in connection with his duties as Deputy Rehabilitator provided that such acts or omissions are undertaken in good faith and without willful misconduct, gross negligence or criminal intent. All expenses, costs and attorney's fees incurred by the Deputy Rehabilitator in connection with any lawsuit brought against him in his representative capacity as Deputy Rehabilitator shall be subject to the approval of the Commissioner and the court and shall be exclusively paid out of the funds and assets of Mutual Benefit. The Deputy Rehabilitator shall not be deemed to be an employee of the State of New Jersey and thus, shall not be subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

POSSESSION OF ASSETS, RECORD NOTICE OF TITLE

(4) The Rehabilitator is hereby granted, and is hereby directed to take, immediate exclusive possession and control of and title to the business and all of the assets, contracts, causes of action, books, records, bank accounts, certificates of deposit, funds, securities or other funds and all real or personal property of any nature of Mutual Benefit, including furniture, fixtures and office supplies, wherever located, and including such property of Mutual Benefit which may be discovered hereafter. Pursuant to N.J.S.A. 17B:32-15(c), the filing or recording of this order or a certified copy hereof with the Clerk of this Court and with the recorder of deeds of the jurisdiction in which Mutual Benefit's corporate and administrative offices are located, or, in the case of real estate, with the recorder of deeds of the jurisdictions where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds. Except as otherwise indicated elsewhere in this Order, and upon notice provided by the Rehabilitator, all agents and brokers and all other persons or entities holding funds, assets or property of, or on behalf of, Mutual Benefit shall forthwith file an accounting of those funds, assets or property with the Rehabilitator and shall within 10 days of the entry of this Order, turn those funds, assets or property over to the Rehabilitator.

REHABILITATOR'S AUTHORITY TO CONDUCT BUSINESS

(5) The Rehabilitator is hereby directed to immediately begin conducting the business of Mutual Benefit and to begin taking such steps as the Rehabilitator or his designee may deem appropriate toward removing the cause and conditions which have made rehabilitation necessary. The Commissioner is hereby authorized to take such necessary steps as he may deem appropriate to protect and to preserve the valuable existing group health insurance, group life insurance and long-term disability insurance (LTD) (collectively, "the group business"), including but not limited to transferring assets to a separate subsidiary for the overall benefit of Mutual Benefit's creditors and policyholders, subject to approval by this Court upon the return date of this Order.

NAME CHANGE AND WITHDRAWAL OF BANK ACCOUNTS

(6) The Rehabilitator may change to his own name, the name of any of Mutual Benefit's accounts, funds or other property or assets held with any bank, savings and loan association or other financial institution, and may withdraw such funds, accounts and other assets from such institutions or take any lesser action necessary for the proper conduct of the rehabilitation.

INJUNCTION AGAINST CONDUCTING BUSINESS,
INTERFERING WITH REHABILITATION, MAKING LEVIES,
DISPOSING OF ASSETS AND PURSUING SUITS AGAINST
THE REHABILITATOR, ESTATE AND REINSURERS

(7) All officers, directors, policyholders, agents, and employees of Mutual Benefit and all other persons or entities of any nature, including but not limited to claimants, holders of

annuity contracts, beneficiaries under any Mutual Benefit contract, plaintiffs or petitioners in any action against Mutual Benefit, physicians, hospitals or other medical or health care providers, and any governmental agencies, having claims of any nature against Mutual Benefit including crossclaims, counterclaims and third party claims, are hereby enjoined and restrained from:

a. conducting any portion or phase of the business of Mutual Benefit unless so authorized by the Rehabilitator or Deputy Rehabilitator;

b. bringing, maintaining or further prosecuting any action at law, suit in equity, special or other proceeding against Mutual Benefit, its estate in receivership or against the Commissioner and his successors in office, as Rehabilitator thereof, or against the Deputy Rehabilitator appointed pursuant to paragraph 3 above;

c. making or executing any levy upon the property or estate of Mutual Benefit;

d. selling, transferring, wasting or otherwise disbursing or disposing of or encumbering in any manner the assets and property of any nature of Mutual Benefit except as the Rehabilitator may direct in writing or until further order of the court;

e. interfering in any way with the Commissioner, or any successors in office, in his possession of or title to the property and assets of Mutual Benefit, or in the discharge of his duties as Rehabilitator thereof, pursuant to this Order. All

persons or entities of any nature other than the Rehabilitator, are hereby restrained from commencing, maintaining or further prosecuting any direct or indirect actions against any reinsurer of Mutual Benefit for proceeds of any reinsurance policies issued to, or treaties or other agreements with, Mutual Benefit.

REINSURANCE POLICIES AND CONTRACTS

(8) The amounts recoverable by the Rehabilitator from any reinsurer of Mutual Benefit shall not be reduced as a result of this rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of Mutual Benefit is hereby enjoined and restrained from terminating, cancelling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with Mutual Benefit, except for non-payment of premium. The Rehabilitator or Deputy Rehabilitator may terminate or rescind any contract with a reinsurer or reinsurers that is contrary to the best interests of the estate in rehabilitation.

UNPAID PREMIUMS

(9) a. Any agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium, shall be obligated to pay any unpaid premiums, whether earned or unearned, as shown on the records of Mutual Benefit as of the date of the entry of this Order. No credit or set-off shall be allowed in favor of such person against his account with Mutual Benefit for the unearned portion of the premium on any cancelled contract, bond or policy, unless:

(i) that contract, bond or policy was cancelled prior to the entry of this Order, and

(ii) the unearned premium on the cancelled contract, bond or policy was in fact refunded or credited to the insured or the insured's assigns prior to the entry of this Order.

The Rehabilitator shall also have the right to recover from such person any part of an unearned premium that represents a commission to such person.

b. All group and individual insureds of Mutual Benefit shall be obligated to pay any unpaid earned premium due to Mutual Benefit at any time, as shown on the records of Mutual Benefit.

POLICY CONTRACT CONTINUATION AND CANCELLATIONS

(10) All contracts of coverage issued by Mutual Benefit shall remain in full force and effect until further Order of this court except where cancelled for non-payment of premium or for similar reasons or upon the normal expiration date. Notwithstanding the above, any policy cancellations initiated by Mutual Benefit's policyholders shall be prospective only, where such cancellations are allowable by law and according to each individual policy. The Rehabilitator shall have the right to cancel any policy where such cancellation is allowable by law and according to each individual or group policy or binder.

TRUST AGREEMENTS

(11) All trust agreements of which Mutual Benefit is a party are hereby frozen such that no trustee or beneficiary is permitted to make any transactions with respect to any such trust until further Order of this court or unless the Rehabilitator or Deputy Rehabilitator deems it advisable to approve certain transactions relating to any such trust.

INJUNCTION AGAINST INTERFERING WITH REHABILITATION

(12) Until further Order of this court, all persons, corporations, partnerships, associations and all other entities, wherever located, are hereby enjoined and restrained from interfering in any manner with the Rehabilitator's possession, title and rights to the assets and property of Mutual Benefit, and from interfering in any manner with the conduct of the rehabilitation of Mutual Benefit. Those persons, corporations, partnerships, associations and all other entities are hereby enjoined and restrained from wasting, transferring, selling, concealing, terminating, cancelling, destroying, disbursing, disposing of, or assigning any assets, contracts, causes of action, funds, records or other property of any nature of Mutual Benefit.

INJUNCTION AGAINST ACTIONS BY SECURED CREDITORS

(13) All secured creditors or parties, pledgees, lienholders, collateral holders or other persons claiming secured, priority or preferred interests in any property or assets of Mutual Benefit, including any governmental entity, are hereby enjoined from taking any steps whatsoever to transfer, sell, encumber,

attach, dispose of or exercise purported rights in or against any property or assets of Mutual Benefit.

APPOINTMENT OF DEPUTIES AND OTHER PERSONNEL

(14) Pursuant to N.J.S.A. 17B:32-17, the Rehabilitator is authorized to employ or to continue to employ and to fix the compensation of such deputies, counsel, agents, clerks, employees, accountants, actuaries, consultants, assistants and other personnel as he considers necessary, and all compensation and expenses of such persons and of taking possession of Mutual Benefit and conducting this proceeding shall be paid out of the funds and assets of Mutual Benefit.

RESTRAINTS ON POLICY LOANS AND SURRENDERS

(15) Restraints are hereby imposed on lending Mutual Benefit funds on policy loans, payment of cash surrender values, surrenders, withdrawal of pension deposits, funds transfers, lapses, cash-outs, conversions, options or redemptions, and the payment of any benefits or periodic payments of any kind, except as provided herein, pending the further order of this court; however, these restraints do not enjoin disbursement of regular benefit payments to life insurance policy beneficiaries, disability policy beneficiaries, health policy beneficiaries, annuity holders or pension beneficiaries on existing policies, or any disbursement pursuant to group life, group disability or group medical insurance contracts, or any policy loans under policy form FA85. Nor shall these restraints prohibit the payment on separate accounts in connection with variable annuities. These restraints shall take

effect immediately, so that any checks or other payments which have not actually been mailed by Mutual Benefit prior to the entry of this Order shall be subject to the restraints, as will all other payments requested. Any checks or other payments which have been actually mailed by Mutual Benefit as of the date of the Order will be honored, provided that those checks or payments are otherwise proper and in compliance with relevant law. The Commissioner shall retain his full authority, however, to challenge any payments as voidable transfers under N.J.S.A. 17B:32-25 or otherwise. The Rehabilitator may pay obligations which he or his deputy determines to be essential to the administration of the rehabilitation estate, and hardship exceptions to the restraints imposed by this paragraph may be paid at the discretion of the Rehabilitator or Deputy Rehabilitator.

NOT A DECLARATION OF INSOLVENCY

(16) This Order shall not be deemed a declaration of insolvency such as would activate the provisions of the New Jersey Property and Liability Insurance Guaranty Association Act, N.J.S.A. 17:30A-1 et seq., or the provisions of a similar Act of any other State.

CAPTION FOR PROCEEDINGS

(17) All further papers filed in these proceedings shall bear the caption and be entitled:

IN THE MATTER OF THE REHABILITATION OF MUTUAL BENEFIT LIFE INSURANCE INSURANCE COMPANY))))	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - MERCER COUNTY GENERAL EQUITY PART DOCKET NO. C-91-00109
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APPLICATION FOR FURTHER RELIEF

(18) The Commissioner or Rehabilitator may at any time make further application for such further and different relief as he sees fit.

RETENTION OF JURISDICTION

(19) This court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

FUTURE POLICY SALES WITH REINSURANCE

(20) The Commissioner may allow Mutual Benefit's agents to continue to write Mutual Benefit individual life insurance policies from and after the date of this Order, provided such policies are 100% reinsured to the satisfaction of the Commissioner.

RETENTION OF MANAGEMENT

(21) The Commissioner may take such steps, in his discretion, as may be necessary to keep Mutual Benefit's current management personnel on the rehabilitation staff, subject to approval by this Court upon the return date of this Order; and it is

CONTINUATION OF INDEMNIFICATION

(22) Pending the return date of the Order to Show Cause, the Rehabilitator shall continue existing indemnification by-law provisions and insurance for those persons who as of the date of the Order to Show Cause were the directors, officers and employees of Mutual Benefit.

FURTHER ORDERED that the defendant and all other interested parties shall show cause before the Honorable Paul G. Levy, J.S.C. at the Mercer County Courthouse, ^{210 S. BROAD ST., FIFTH FLOOR} Trenton, New Jersey, at 10:00 a.m. on the 5TH day of AUGUST, 1991, why an Order should not be entered containing the following provisions:

(a) Continuing the Commissioner's power to act as Rehabilitator with all of the powers and authority provided under this Order and pursuant to statute;

(b) Continuing the restraints imposed by this order;

(c) Approving transfer of the group business to Mutual Benefit's subsidiary as more fully set forth in the affidavits submitted herewith; and

(d) Making the following orders:

(1) Indemnification. Persons who, as of the date of the Order to Show Cause, were the directors, officers and employees of Mutual Benefit shall, during the rehabilitation period be entitled to indemnification by Mutual Benefit, for a period not to exceed three (3) years from the date of the Order, against all liabilities and expenses arising by reason of their holding or having held any such position prior to the date that Mutual Benefit is ordered into rehabilitation, in accordance with the provisions of Section 31 of Mutual Benefit's bylaws incorporating the provisions of N.J.S.A. 14A:3-5, and to receive the benefits of Mutual Benefit's present Executive Liability Insurance Policy including Company

Reimbursement, Policy No. 7022-56-24, dated March 20, 1991, which policy shall not be amended or terminated by the Rehabilitator.

(ii) Retention Of Corporate Officers And Termination Bonus.

Employment of the following corporate officers who have held the positions indicated will be continued at the discretion of the Commissioner and in such capacity as he directs:

Henry E. Kates, President
Stephen J. Carlotti, Senior Executive Vice President
Edward M. Bull, Executive Vice President
Donald F. Haller, Jr., Senior Vice President
Robert T. Budwick, Executive Vice President
Charles G. McCaig, Senior Vice President
Donald R. Sondergeld, Executive Vice President.

Mr. Kates, who has resigned as President, agrees to be employed as a consultant on a per diem basis for a period of up to six (6) months. Mr. Carlotti and Mr. Haller have agreed to be exclusively employed for a period of up to six (6) months compensated at the annual rate of \$500,000 and \$400,000 respectively. The other individuals have agreed to be exclusively employed for a period of up to twelve (12) months. Subject to the conditions set forth below, each of the aforesaid corporate officers will be paid a termination bonus equal in monetary amount to that which he would have received, pursuant to a resolution of the Mutual Benefit Board of Directors on June 19, 1991 == i.e. for persons occupying the office of executive vice president or above, the sum of (a) two weeks base salary for each year or portion of a year of service with the company or any affiliate, including service as a General Agent, but not to exceed fifty-two (52) weeks, and (b) an amount equal to twenty-six (26) weeks of the authorized

base salary for such individual, without regard to any incentive compensation arrangement, and for Messrs. Carlotti, Haller and Sondergeld, the monetary value of benefits to which they would otherwise be entitled under the company's unfunded deferred compensation plan for an amount equal to fifty percent (50%) of annual base salary. To receive this termination bonus, however, the following conditions must be satisfied:

- A. The corporate officer must continue employment with Mutual Benefit at the discretion of the Commissioner for the period indicated following the entry of the proposed Order;
- B. The corporate officer shall not have been terminated for cause by the Commissioner; and
- C. That no evidence has been found of acts or omissions by the individual that would justify the company's refusal to indemnify him pursuant to Section 31 of the by-laws.

It is further provided that Henry E. Kates may apply to the Court for earned, but unpaid, deferred compensation in the amount of \$150,000, which application the Commissioner shall support provided that appropriate proofs are submitted; and it is

(4) FURTHER ORDERED that service of true conformed copies of this Order to Show Cause, the Verified Complaint, the supporting affidavits of plaintiff shall be made upon Mutual Benefit by overnight mail or courier within two days of the entry of this Order; and it is

(5) FURTHER ORDERED that service of notice of this Order to Show Cause upon all other creditors, policyholders, subsidiaries

and interested parties shall be accomplished by publishing a copy of the form of Notice which is appended to this Order to Show Cause once within 5 days of the date of this Order in a newspaper of general circulation in the capital city of each state in which Mutual Benefit does business, as well as in the Wall Street Journal, The New York Times, The Star-Ledger, The Times of Trenton, and The Courier-Post; and it is

(6) FURTHER ORDERED that any person who wishes to object or be heard on the issues to be considered on the return date of this Order to Show Cause shall file a written objection and accompanying brief with this Court and also serve same upon the Attorney General and counsel for Mutual Benefit not later than ~~SEVEN~~ ⁽⁷⁾ days before the return date of this Order. No objections or comments ~~may~~ ^{MAY} be entertained by this Court if this requirement for written objections and briefs is not met.



Paul G. Levy, J.S.C. | P.J.Ch.

**NOTICE TO ALL POLICYHOLDERS, CREDITORS, CLAIMANTS,
SUBSIDIARIES AND ALL OTHER INTERESTED PARTIES
REGARDING MUTUAL BENEFIT LIFE INSURANCE COMPANY**

On July 16, 1991, the Superior Court of New Jersey entered a Consent Order to Show Cause With Temporary Restraints In the Matter of the Rehabilitation of Mutual Benefit Life Insurance Company, Docket No. C-91-00109 against **MUTUAL BENEFIT LIFE INSURANCE COMPANY ("MUTUAL BENEFIT")**, a mutual insurance company having principal offices at 520 Broad Street, Newark, New Jersey.

The Order to Show Cause principally provides as follows:

The New Jersey Insurance Commissioner is appointed as rehabilitator, who is immediately authorized to conduct the business of Mutual Benefit and may appoint a Deputy Rehabilitator to perform these duties and functions; imposes temporary restraints on policy loans, cash surrenders, and other specific categories of disbursements; authorizes pre-arranged reinsurance for new life insurance business written by Mutual Benefit; authorizes the Commissioner as Rehabilitator to commence measures, subject to further court approval on the return date, to preserve the valuable group business of Mutual Benefit including but not limited to the transfer of such business and corresponding asset reserves to a separate subsidiary for the overall benefit of Mutual's creditors and policyholders; continues the indemnification provisions under the company's by-laws for officers, directors and employees of Mutual Benefit pending the return date; and imposes additional interim relief to advance the rehabilitation process, all as more particularly set forth in the Order to Show Cause.

The Honorable Paul G. Levy, J.S.C. has established a return date at the Mercer County Courthouse, Trenton, New Jersey, at 9:00 a.m. on the _____ day of _____, 1991 at which time the defendant and all other interested parties shall show cause why an Order should not be entered containing the following provisions:

(a) Continuing the Commissioner's power to act as Rehabilitator with all of the powers and authority provided under the Order to Show Cause and pursuant to statute;

(b) Continuing the restraints imposed by the Order to Show Cause;

(c) Approving transfer of the group business to Mutual Benefit's subsidiary as set forth in supporting affidavits filed by the State; and

(d) Making the following orders to assure the continued retention, in the discretion of the Rehabilitator, of certain senior management of Mutual Benefit to assist in the orderly rehabilitation of Mutual Benefit under the Rehabilitator's

direction and to obtain the consent of the Board to the rehabilitation proceedings:

(1) Approving the retention of certain officers who will remain employed with the company, at the discretion of the Rehabilitator, for up to twelve months, and who will receive certain compensation and other benefits as specified in a prior June 19, 1991 resolution of the Board. This compensation will be due, provided that the officers are not terminated for cause and there is no evidence of conduct that would disqualify them from indemnification.

(2) Granting indemnification during the rehabilitation period against all liabilities and expenses for a period of three years to the directors, officers and employees at Mutual Benefit arising by reason of those persons holding or having held any such position prior to the date that Mutual is ordered into rehabilitation in a manner consistent with the Mutual's existing by-laws and consistent with N.J.S.A.14A:3-5.

POLICYHOLDERS, CREDITORS, CLAIMANTS, SUBSIDIARIES AND OTHER INTERESTED PARTIES who wish to object or be heard on the issues to be considered on the return date of the Order to Show Cause shall within days from the date of the Order to Show Cause file a written objection and accompanying brief with this Court and also serve same upon: (1) Sharon M. Hallanan, Deputy Attorney General, Richard J. Hughes Justice Complex, CN 117, Trenton, New Jersey 08625, and (2) counsel for defendant, Samuel Butler, Esq., Cravath, Swaine and Moore, Worldwide Plaza, 825 Eighth Avenue, New Jersey 10019. No objections or comments will be entertained by the Court if this requirement for written objections and briefs is not met.

LAW OFFICES
FREEDMAN, LEVY, KROLL & SIMONDS

WASHINGTON SQUARE - 1050 CONNECTICUT AVE. N.W.

WASHINGTON, D. C. 20036-5366

(202) 457-5100

GARY O. COHEN
(202) 457-5107

CABLE "ATTORNEYS"
TELECOPIER: 202-457-5151

August 23, 1991

1940 Act/2(a)(4)
1940 Act/15(a)(4)
1940 Act/15(b)(2)
1940 Act/Rule 2a-6

BY HAND DELIVERY

Clifford E. Kirsch, Esq.
Assistant Director
Office of Insurance Products &
Legal Compliance
Division of Investment Management
U.S. Securities and Exchange Commission
450 - 5th Street, N.W.
Room 10167, Stop 10-6
Washington, D.C. 20549

Re: Mutual Benefit Fund ("Benefit Fund")
File No. 811-2046 and No. 2-36663
MBL Growth Fund, Inc. ("Growth Fund")
File No. 811-3593 and No. 2-96199
MAP Government Fund, Inc. ("MAP Fund")
File No. 811-3548 and No. 2-78975
The Specialty Managers Trust ("Managers Trust")
File No. 811-5629 and No. 33-23512
Mutual Benefit Variable Contract Account-7 ("VCA-7")
File No. 811-3853 and No. 2-86722
Markston Investment Management ("Markston")
File No. 801-15894
Mutual Benefit Financial Service Company ("FISCO")
File No. 801-8154 and No. 8-15263
Directed Services, Inc. ("DSI")
File No. 801-32675 and No. 8-39104

Dear Mr. Kirsch:

We are writing to supplement our letter to you dated August 2, 1991, to reflect certain developments since the appointment of a Rehabilitator for The Mutual Benefit Life Insurance Company ("Mutual Benefit Life") and to make certain additional points. Our letter requested, on behalf of the above-named companies, that the Commission staff furnish us with a letter stating that it will not recommend that the Commission take enforcement action if Markston,

FISCO and DSI continue to perform under their respective investment advisory agreements (including service and management agreements) and principal underwriting agreements (including distributor's and sales agreements), without further interestholder vote, under the highly unusual circumstances described in our letter. We are supplementing our letter pursuant to conversations with you and your staff.

The Superior Court of New Jersey, on August 7, 1991, entered an Order Continuing Rehabilitator's Appointment, Continuing Restraints, and Granting Other Relief (the "New Order") (copy enclosed). Paragraph 2(c) of the New Order permits payment from and withdrawal of funds invested in variable life insurance policies, as well as variable annuities, that have been maintained separately and apart from the other assets and liabilities of Mutual Benefit Life. The New Order, therefore, confirms the fact that, as noted in footnote 33 of our letter, variable life insurance policyholders continue to have the right to redeem.

There have been certain changes in the officers of Mutual Benefit Life, as set out in footnote 17 of our letter, since we submitted our letter. Mr. Carlotti has resigned as President and Chief Executive Officer, but continues to serve as consultant to Mutual Benefit Life. Mr. Haller has resigned as Executive Vice President, but continues to perform the duties of such office in the capacity of consultant to Mutual Benefit Life. Mr. McCaig was incorrectly referred to in the original Order as Executive Vice President. Mr. McCaig has resigned as Senior Vice President and Senior Administrative Officer. Consistent with paragraph 3 of the New Order, Mutual Benefit Life has contracted to sell what the New Order refers to as its "Group Business." Mr. Bull, who is in charge of the Group Business, is expected to become associated with the buyer upon consummation of the sale.

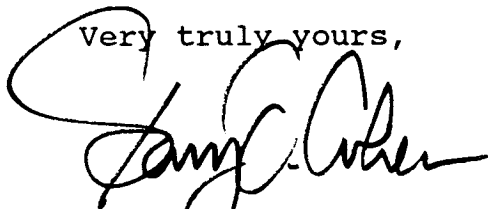
Our letter, in footnote 15, states that subsequent changes in the circumstances of Mutual Benefit Life or its subsidiaries, pursuant to additional court action or otherwise, may eventually result in a change in actual control or management. We hereby delete this footnote from our letter. We understand that any no-action letter issued by the staff will state, consistent with traditional staff practice, that the no-action position is conditioned on facts and circumstances as stated in our letter. As the staff is aware, the rehabilitation of Mutual Benefit Life is a continuing process, and different facts and circumstances would need to be analyzed to determine whether they result in a change in actual control or management to which the no-action position may not apply.

Finally, we submit that the staff's no-action letter in connection with Siebel Capital Management, Inc. ("SCMI"), dated July 3, 1991, further supports the textual statement accompanying footnote 16 of our letter. Our rationale is as follows. First, the investment adviser, SCMI, had filed for Chapter 11 bankruptcy in August 1990, as debtor in possession. There is no recognition in the incoming letter or staff no-action letter of a change in control issue triggered by the bankruptcy court's assumption of jurisdiction over the adviser or that the fact could have effectively caused an assignment of the investment advisory agreements. Second, in October 1990, SCMI's principal investment manager abruptly resigned, and SCMI made representations that the instability of its operations caused by the Chapter 11 filing made it incapable of providing another investment manager (see the incoming letter). Still, there is no indication that this further fact could have constituted a change in control or an assignment. Finally, the staff took a no-action position with regard to SCMI's entering into sub-investment advisory agreements pursuant to Rule 15a-4, based on an analysis that there was no termination of the SCMI agreements (see SEC no-action letter).

Consistent with the last paragraph on page 23 of our letter, we understand that you are informing the Division's Office of Chief Counsel of our letter.

Please call me, Diane E. Ambler or Richard T. Choi at this firm if you have any question or wish to discuss this matter.

Very truly yours,



Gary O. Cohen

GOC/cjc

Enclosures:

New Order
Six copies of letter

cc: Heidi Stam, Esq.
Michael V. Wible, Esq.

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FILED

AUG 7 1991

**CHAMBERS OF
JUDGE PAUL S. LEVY**

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Special Counsel for Plaintiff

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MERCER COUNTY
GENERAL EQUITY PART
DOCKET NO. C-91-00109**

IN THE MATTER OF THE) Civil Action
REHABILITATION OF MUTUAL)
BENEFIT LIFE INSURANCE) ORDER CONTINUING REHABILITATOR'S
COMPANY, a Mutual Insurance) APPOINTMENT, CONTINUING RESTRAINTS,
Company of New Jersey.) AND GRANTING OTHER RELIEF

This matter having been opened to the Court by Robert J. Del Tufo, Attorney General of New Jersey, (Edward J. Dauber, Assistant Attorney General, appearing) attorney for plaintiff Samuel F. Fortunato, Commissioner of Insurance ("Commissioner", or "Rehabilitator"), and Cole, Schotz, Bernstein, Meisel & Forman, A., (Michael S. Meisel appearing) Special Counsel to the Rehabilitator, on the return date of this Court's July 16, 1991 Consent Order to Show Cause with Temporary Restraints ("July 16

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ler"); and, the Court having directed that defendant Mutual Benefit Life Insurance Company ("Mutual Benefit") and all interested parties show cause why an Order should not be entered containing the following provisions: (a) continuing the Commissioner's authority to act as Rehabilitator with all the powers and duties provided under the July 16 Order and pursuant to statute; (b) continuing the restraints imposed by the July 16 Order; (c) approving the transfer of Mutual Benefit's Group Business as identified in the Commissioner's submissions to the Court; and (d) making orders regarding: (i) the indemnification of certain directors, officers and employees, and (ii) the retention of certain corporate officers and termination bonuses, subject to those conditions set forth in the July 16 Order; and, notice by publication having been given pursuant to the July 16 Order; and the Court having considered the objections, comments and requests for clarification filed by interested parties and the Commissioner's Status Report, Request for Order Continuing Restraints with Modifications, and Response to Objections; and good cause having been shown:

IT IS, on this 7th day of August 1991,

ORDERED:

1. The Commissioner's authority to act as Rehabilitator with all the powers and duties provided under the July 16 Order and pursuant to statute shall continue until further Order of this Court.

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2. The July 16 Order contained certain restraints in paragraphs 7, 8, 9, 10, 11, 13 and 15, and all such restraints are continued on an interlocutory basis, pending further order of this Court, except that the following terms are modified:

(a) The restraints in paragraph (15) on policy loans shall not apply to automatic policy loans under Mutual Benefit life insurance policies where such loans are used to pay renewal premiums as they become due.

(b) The exception to the restraints in paragraph (15) which allows policy loans under "policy form FA85" shall be deemed to refer to "loans on corporate owned life insurance ('COLI') issued on Form FA85 or its successors."

(c) The exception to the restraints in paragraph (15) which allows "payment on separate accounts in connection with variable annuities" shall be deemed to refer to allowing "payment from and withdrawal of funds invested in those variable annuities and variable life insurance policies which have been maintained separately and apart from Mutual Benefit's other assets and liabilities."

3. The Rehabilitator is authorized to continue

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negotiations for the sale of the Group Business and may enter into a contract of sale, subject to this Court's approval as set forth herein. The Rehabilitator or his representatives shall meet with representatives of counsel for objectors, or other interested parties with concerns about the proposed sale, to discuss a practical method for sharing information with those objectors in lieu of more formal discovery procedures. The Rehabilitator may restrict the release of information to assure that appropriate confidentiality is maintained with respect to trade secrets or other proprietary information. If that meeting does not satisfactorily address the objectors' concerns, they may request a conference call with the Court and the Rehabilitator's counsel to resolve any such issue. If, as is currently contemplated, a final Contract of Sale is negotiated and is approved by the DMEV Boards, the Rehabilitator shall seek an Order to Show Cause from this Court during the week of August 19, 1991, which will provide for notice to the objectors, policyholders, creditors and parties in interest to the July 16 Order. Any party seeking to respond to that Order to Show Cause shall file responsive certifications and briefs, which will be deemed a first Answer requiring payment of a filing fee to the Clerk of the Superior Court in the amount of \$80. Responses on behalf of any corporation eligible to file an action in the Superior Court of New Jersey should be filed by a New Jersey attorney, but motions for appearances pro hac vice may be entertained under R. 1:21-2.

4. The Rehabilitator is authorized to continue

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negotiations with other insurers to participate in or manage the remainder of Mutual Benefit's business (i.e., that business other than the Group Business) with resulting agreements being subject to further Court approval by an Order to Show Cause process patterned after that set forth in paragraph 3 above.

5. No order is being made at this time regarding any of the proposed termination bonuses for certain corporate officers, because no immediate irreparable harm was demonstrated to support such an order.

6. Persons who were the directors, officers and employees of Mutual Benefit on July 16, 1991 shall be entitled to indemnification by Mutual Benefit during the rehabilitation and for a period not to exceed three (3) years therefrom. The indemnification shall be against all liabilities and expenses arising by reason of their holding or having held any such position before July 16, 1991, in accordance with Section 31 of Mutual Benefit's bylaws incorporating the provisions of N.J.S.A. 14A:3-5, and to receive the benefits of Mutual Benefit's present Executive Liability Insurance Policy including Company Reimbursement Policy No. 7022-56-24, dated March 20, 1991, which policy shall not be amended or terminated by the Rehabilitator. The continuing relief set forth in this paragraph is interlocutory and is subject to further consideration by this Court.

7. The Rehabilitator shall modify the Application Hardship Distribution form, attached as Exhibit D to the Commissioner's August 2, 1991 Status Report, or shall otherwise

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notify applicants for hardship distributions that if the applicant is dissatisfied with the Rehabilitator's decision on that Application, the applicant may file a Verified Petition and Order to Show Cause captioned "In re Rehabilitation of Mutual Benefit Life Ins. Co., Petition for Hardship Review by [Name of Petitioner], Superior Court Of New Jersey, Chancery Division - Mercer County, General Equity Part, Docket No. C-91-00109 -H ____". This petition must be filed within thirty (30) days from receipt of the Rehabilitator's decision, and served contemporaneously in accord with paragraph 9 below, along with the filing fee of \$235, payable to the Clerk of the Superior Court of NJ. The filing shall be made directly with the Court, as follows:

Hon. Paul G. Levy
Superior Court of New Jersey
210 South Broad Street -- 5th Floor
CN 977
Trenton, NJ 08625

8. (i). No party in interest shall file or serve any application for relief with the Court, unless (a) such party shall first have made a written request to the Rehabilitator, detailing the relief sought, to the following designee of the Rehabilitator, at this address:

Barbara Pryor Waugh, Asst. Commissioner
Div. of Enforcement and Consumer Protection
New Jersey Department of Insurance,
20 West State Street, 9th Floor
CN 325
Trenton, NJ 08625

(b) the Rehabilitator shall review the request and rule on it in writing, within ten (10) days of the Rehabilitator's receipt thereof, according to the terms of the July 16 Order, as modified

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by this or subsequent Orders of this Court, in the reasonable exercise of his expertise as applied to the factual circumstances of the request; and (c) the Rehabilitator shall send his written decision to the requesting party in interest.

(ii). If the requesting party in interest is not satisfied with the Rehabilitator's decision, that party may seek review from this Court by filing a Verified Petition, proposed Order to Show Cause, with supporting certifications and a brief, captioned "In re Rehabilitation of Mutual Benefit Life Ins. Co., Petition for Relief Review by [Name of Petitioner], Superior Court of New Jersey, Chancery Division - Mercer County, General Equity Part, Docket No. C-91-00109 -R ____". This petition must be filed within thirty (30) days from receipt of the Rehabilitator's decision, and served contemporaneously in accord with paragraph 9 below, along with the filing fee of \$135, payable to the Clerk of the Superior Court of NJ. The filing shall be made directly with the Court, as follows:

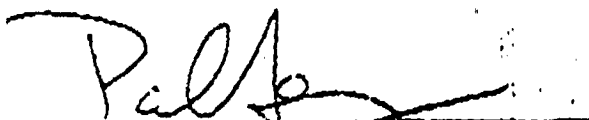
Hon. Paul G. Levy
Superior Court of New Jersey
210 South Broad Street -- 5th Floor
CN 977
Trenton, NJ 08625

9. Service of the Petitions and all supporting documents referred to in paragraphs 7 and 8 of the within Order shall be made upon: (1) Sharon M. Hallanan, Deputy Attorney General, Richard J. Hughes Justice Complex, CN 117, Trenton, New Jersey 08625; and (2) Michael S. Meisel, Esq., Cole, Schotz, Bernstein, Meisel and Forman, Court Plaza North, 25 Main Street, P.O. Box 800,

Hackensack, New Jersey 07602-0800.

10. Service of the within Order shall be made by the Rehabilitator on the objectors or their counsel, if known, and on all counsel who entered an appearance before the Court on August 5, 1991, by regular mail, within seven (7) days hereof. Further notice of the within Order shall be given to all other creditors, policyholders, subsidiaries or other interested parties, by publishing a copy of a Notice, in the form attached hereto, in newspapers of general circulation in the same manner as provided in paragraph 6 of the July 16 Order.

11. Hereafter, the Court considers that there are no parties to this action except the State by the Attorney General and the Rehabilitator by his Special Counsel, Michael S. Meisel, Esq. As petitions are filed pursuant to paragraphs 7 and 8 above, and as objections are filed to any Orders to Show Cause which might issue, counsel filing same will be considered of record, and thereafter they shall receive notice of anything related to the claims they have made pursuant to R. 1:5-1(a).


Paul G. Levy, P.J.Ch.

**NOTICE TO ALL POLICYHOLDERS, CREDITORS, CLAIMANTS,
SUBSIDIARIES AND ALL OTHER INTERESTED PARTIES
REGARDING MUTUAL BENEFIT LIFE INSURANCE COMPANY**

On August 7, 1991, the Superior Court of New Jersey entered an Order Continuing Rehabilitator's Appointment, Continuing Restraints, and Granting Other Relief in In the Matter of the Rehabilitation of Mutual Benefit Life Insurance Company, Docket No. C-91-00109 against MUTUAL BENEFIT LIFE INSURANCE COMPANY ("MUTUAL BENEFIT"), a mutual insurance company having principal offices at 520 Broad Street, Newark, New Jersey.

The Order principally provides as follows:

The Commissioner of Insurance of New Jersey shall continue to act as Rehabilitator of Mutual Benefit with all the rights and duties provided in the July 16 Consent Order to Show Cause (July 16 Order). All of the restraints contained in the July 16 Order shall continue, with three modifications or clarifications to paragraph 15 to provide that (i) automatic policy loans to pay renewal premiums are not restrained, (ii) "policy form FA85" refers to corporate owned life insurance policies on Form FA85 or its successors, and (iii) "payment on separate accounts" refers to payment from and withdrawal of funds invested in those variable annuities and variable life insurance policies which have been maintained separately and apart from Mutual Benefit's other assets and liabilities."

The Rehabilitator may continue negotiations to sell Mutual Benefit's group business and will meet with interested persons to discuss the proposed sale. If the contract of sale is finalized as planned, the Rehabilitator shall file an Order to Show Cause during the week of August 19, 1991, to present the final contract of sale to the Court and interested parties. The Rehabilitator is further authorized to continue negotiations regarding the remainder of Mutual Benefit's business, with resulting agreements subject to Court approval using a similar Order to Show Cause procedure.

No order is being made at this time regarding proposed termination bonuses for certain corporate officers. The Order continues to provide indemnification to persons who were the directors, officers and employees of Mutual Benefit on July 16, 1991, but the Court stated that this provision was subject to further consideration.

The Court further established procedures for persons filing an Application for Hardship Distribution -- as well as for all others seeking to file applications for relief -- to first seek relief from the Rehabilitator. Application for Hardship Distribution forms may be requested by calling 1-800-435-7887, and the completed application form should be sent to the appropriate address listed on the form. Applicants for other than Hardship Distribution relief should send their applications to: Barbara Pryor Waugh, Assistant Commissioner, Division of Enforcement and Consumer

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Protection, New Jersey Department of Insurance, 20 West State Street, 9th Floor, CN 325, Trenton, NJ 08625. If relief from the Rehabilitator is unsatisfactory, the applicant for hardship relief may file a Verified Petition and Order to Show Cause captioned "In re Rehabilitation of Mutual Benefit Life Ins. Co., Petition for Hardship Review by [Name of Petitioner], Superior Court of New Jersey, Chancery Division - Mercer County, General Equity Part, Docket No. C-91-00109 -H _____. An unsatisfied applicant for other relief may file a Verified Petition, proposed Order to Show Cause, with supporting certifications and a brief, captioned "In re Rehabilitation of Mutual Benefit Life Ins. Co., Petition for Relief Review by [Name of Petitioner], Superior Court of New Jersey, Chancery Division - Mercer County, General Equity Part, Docket No. C-91-00109 -R _____. Either type of petition must be filed within thirty (30) days from receipt of the Rehabilitator's decision, along with the filing fee of \$135, payable to the Clerk of the Superior Court of NJ. The filing shall be made directly with the Court, as follows:

Hon. Paul G. Levy
Superior Court of New Jersey
210 South Broad Street -- 5th Floor
CN 977
Trenton, NJ 08625

Contemporaneous with the filing, copies of the Petition and supporting documents must be served upon (1) Sharon M. Hallanan, Deputy Attorney General, Richard J. Hughes Justice Complex, CN 117, Trenton, New Jersey 08625; and (2) Michael S. Meisel, Esq., Cole, Schotz, Bernstein, Meisel and Forman, Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602-0800.