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

DIVISION OF
INVESTMENT MANAGEMENT

PUBLIC

June 30, 1994

ACT ICA
SECTION 3(c)(1)
RULE
PUBLIC
AVAILABILITY 6/30/94

Edward H. Fleischman, Esq.
Rosenman & Colin
575 Madison Ave.
New York, N.Y. 10022-2585

Re: The PanAgora Group Trust No-Action Letter

Dear Mr. Fleischman:

Your letter to the Division of Investment Management dated June 24, 1994 notes widespread concern among practitioners in the fields of both employee benefits and investment company law about the implications of our recent letter to The PanAgora Group Trust (pub. avail. Apr. 29, 1994) (the "PanAgora letter"). In the PanAgora letter, the staff stated that for purposes of the exception for private investment companies set forth in Section 3(c)(1) of the Investment Company Act of 1940, we would consider a defined contribution plan participant who decides whether or how much to invest in a private investment company to be a beneficial owner of the company's securities. The group trust described in the PanAgora letter and any investment fund comprising the group trust, therefore, would be required to count as beneficial owners all participants in participant-directed defined contribution plans who invest in that trust or investment fund.

In your letter, you ask the staff to clarify the applicability of the PanAgora letter to private investment companies in which participant-directed defined contribution plans invest under circumstances or conditions that differ from those presented in the PanAgora letter. You offer to provide the staff, and to elicit other interested parties to provide the staff, with information relevant to the requested clarification.

You also ask that, with respect to existing arrangements under which defined contribution plan participants have directed plan investments into private investment companies that have not counted the individual participants as beneficial owners, we delay the effectiveness of our response in the PanAgora letter for a reasonable time. You believe that this would allow those private investment companies to liquidate, in an orderly manner, investments that may cause them to violate the requirements of Section 3(c)(1).

We have determined to delay the effective date of the PanAgora letter response until January 1, 1995. We also would consider information that interested parties submit in writing to help clarify the applicability of the PanAgora letter to facts

different from those presented in that letter. Any request for clarification should fully describe the facts to be distinguished from those presented in the PanAgora letter and analyze from a legal and policy perspective whether, under those different facts, defined contribution plan participants who direct their plan investments in a private investment company should be treated as beneficial owners for purposes of Section 3(c)(1).

Sincerely,

Richard F. Jackson
Special Counsel
Office of Chief Counsel

Inv. Co. Act §3(c)(

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Attn: Barbara Green, Esq.,
Deputy Director

Re: Staff Letter concerning The PanAgora Group Trust

Ladies and Gentlemen:

We refer to the letter (the "PanAgora Letter") dated and publicly available April 29, 1994 from Richard Jackson, Special Counsel in the Division, concerning the PanAgora Trust. We have no authorization to speak for any firm or organization other than Rosenman & Colin, but we can assure you, on the basis of inquiries we have made among active practitioners in the fields of both employee benefits and investment company law, of the widespread concern evoked by the PanAgora Letter.

The PanAgora Letter concludes that a participant in any defined contribution plan who has the ability to direct his or her balance in the plan into an investment in the group trust and/or one or more of the funds comprising that group trust would be considered a beneficial owner of the securities of that group trust and of each fund in the group trust into which he or she has directed a portion of his or her balance under the plan. Thus, each such participant would be considered as one person for the purposes of determining whether or not the group trust and/or the respective separate investment funds will qualify for the 100 securityowner exemption provided by Section 3(c)(1) of the Investment Company Act of 1940 (the "Act"). While written in response to an inquiry from an undivided group trust with no expressed limitations on participants' authority to make

investment decisions, this conclusion could equally extend to investments in other forms of collective investment vehicles if indicia associated with participant direction of investments are present.

As you know, the staff letter to Intel Corporation (the "Intel Letter"), dated and publicly available November 18, 1992 (and included on the SEC List of Significant Staff Letters dated March 11, 1993), which addressed the attribution analysis under Section 3(c)(1)(A) of the Act, assumed (without deciding) that, unless Section 3(c)(1)(A) made the general rule of Section 3(c)(1) inapplicable, a plan with participant direction would only be considered as one person for the purposes of Section 3(c)(1).

It is our experience that a number of disparate collective investment vehicles have chosen to utilize the exemption from the definition of "investment company" provided by Section 3(c)(1) of the Act and, in reliance upon the Intel Letter, have accepted qualified plans as investors in such vehicles. Furthermore, it is our experience that a number of such vehicles, in accepting the entry of qualified plans into participation, have made no inquiry as to whether those qualified plans allow or prohibit participant direction of investments. Immediate and across-the-board application of the PanAgora conclusion without taking into account differences among categories of collective investment vehicles and the terms governing operation of their constituent investors would have the effect of leaving many such investment vehicles in a putatively non-exempt status, to the severe detriment not only of the vehicles themselves but of the participating employee "securityowners". We, therefore, respectfully request that the staff clarify the applicability of the PanAgora Letter to investment vehicles of various categories other than undivided group trusts and/or governed by terms placing varying limitations upon participant direction of investments therein. This would allow investment vehicle sponsors and other interested parties an opportunity to provide the staff with additional information and argument upon which to make a more informed decision on these issues. This Firm will be pleased to provide the staff with such information as we can, and to elicit from other interested parties additional information, relevant to such clarification.

We also respectfully request that, at least with respect to vehicles that have already accepted participant-directed plans as investors in reliance upon the implicit approval of the Intel Letter, the staff announce a delay in the application of the PanAgora conclusion for a reasonable time. This would allow the orderly liquidation of investments that may be impermissible

under the PanAgora Letter as clarified by the staff, and would avoid placing collective investment vehicles or their "securityowners" at risk of economic loss or law violation for actions taken in good faith based upon prior staff interpretation of the statute.

We shall very much appreciate your prompt attention to these requests.

Very truly yours,

ROSENMAN & COLIN

By: _____
A Partner

EHF/LHR/dh