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

March 30, 1994

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

RE: Mutual Benefit Life

Dear Mr. Cohen:

Enclosed is our response to your letters of March 11, 1994 and February 8, 1994. By incorporating our answer into the enclosed photocopy 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-2-94.

Sincerely,

Michael V. Wible

Michael V. Wible
Special Counsel
Office of Insurance Products

Enclosure

Mutual Benefit Life
520 Broad Street, Newark, NJ 07102-3184
1-201-481-8169 FAX 1-201-268-4334

Eugene J. Ciarkowski
Vice President—Subsidiary Operations
and Secretary

February 8, 1994

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

Reproduced, resigned and resubmitted at request of SEC Staff - March 28, 1994.

Re: Mutual Benefit Fund ("Benefit")
File No. 811-2046 and No. 2-36663
MBL Growth Fund, Inc. ("Growth")
File No. 811-3593 and No. 2-96199
MAP - Government Fund, Inc. ("MAP")
File No. 811-3548 and No. 2-78975
Mutual Benefit Variable Contract Account-7 ("VCA-7")
File No. 811-3853 and No. 2-86722
Markston Investment Management ("Markston")
File No. 801-15894
Green Hill Financial Service Company ("Green Hill")
File No. 801-8154 and No. 8-15263
First Priority Investment Corporation ("FPIC")
File No. 801-44696 and No. 8-46334

Dear Mr. Kirsch:

We are writing, 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 or other action against any of the above named Companies, if Markston and Green Hill, to the extent required, 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 shareholder or interestholder vote. We refer to letters submitted to you on behalf of certain of the above named companies by Freedman, Levy, Kroll & Simonds, dated August 2, 1991 and August 23, 1991, respectively, to reflect developments in connection with the appointment of a Rehabilitator for The Mutual Benefit Life Insurance Company ("Mutual Benefit Life"). We are supplementing the information set forth in those letters to reflect subsequent developments in connection with the appointment of a Rehabilitator for Mutual Benefit Life, the filing by the Rehabilitator of a Plan of Rehabilitation (the "Plan") and the Confirmation Order entered by the Superior Court of New Jersey (the "Court") confirming, among other things, the fairness and reasonableness of the Plan. The current schedule provides for implementation or "closing" of the Plan provisions on or about April 29, 1994.

We have attached copies of the aforereferenced letters for your convenience as relevant to the factual situations occasioned by the Rehabilitation. We point out that Directed Services, Inc. referred to in those letters is no longer affiliated with Mutual Benefit Life and no further relief is requested on its behalf.

This letter also further supplements discussions held with you and other members of the Commission's staff at a meeting held on January 7, 1994 at your offices.

As a summary, on July 16, 1991, pursuant to the New Jersey Rehabilitation and Liquidation Act, the Court entered a temporary Order (the "Order") imposing restraints and appointing the Commissioner of Insurance of New Jersey as Rehabilitator of Mutual Benefit Life which Order conferred certain powers upon the Rehabilitator. 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]". 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. The Order was continued by a second Order entered by the Court on August 7, 1991. Copies of each Order have previously been forwarded to you. As empowered by the Orders, the Rehabilitator developed the Plan and filed it with the Court on August 3, 1992 and filed the First Amended Plan on January 15, 1993. After extensive confirmation hearings dealing with various provisions of the Plan, on November 10, 1993 the Court entered an approving and confirming Order (the "Confirmation Order"). The Confirmation Order, among other things, (i) modified the First Amended Plan of Rehabilitation of The Mutual Benefit Life Insurance Company proposed by the Rehabilitator, (ii) confirmed such Plan, as modified, as generally fair and equitable to all parties and (iii) commenced a provisional liquidation proceeding against Mutual Benefit Life effective as of the closing on or about April 29, 1994, of the transactions contemplated by the Plan ("Closing Date"). A copy of the Plan has been forwarded to you previously. Subsequent to the entry of the Confirmation Order, the Rehabilitator filed the Second Amended Plan with the Court on

December 13, 1993. The Second Amended Plan conformed the Plan to the provisions of the Confirmation Order. On January 28, 1993 the Court issued an Order approving the Third Amended Plan which incorporated a number of technical amendments into the Plan. These amendments are not of a material nature.

Sections 15(a)(4) and (b)(2) of the Investment Company Act of 1940 (the "Act") 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 ... 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 to, or principal underwriter of, an investment company" is not an assignment for purposes of Section 15(a)(4) or (b)(2).

The questions of whether the appointment of Rehabilitator for Mutual Benefit Life should be deemed to constitute an indirect transfer or hypothecation of the Markston and Green Hill advisory and underwriting agreements, or to result in a change of actual control or management of Markston and Green Hill that caused each of the agreements to terminate and, the further question of whether shareholder or interestholder approval of the new agreements should be required were both answered, in effect, in the negative by the staff and no action relief was granted in light of the

demonstration that the unique situation presented by the rehabilitation proceedings did not present abuses the Act was intended to remedy or create conditions that adversely affected the interest of investors. (See letter to Freedman, Levy, Kroll & Simonds (Gary O. Cohen, Esq.) from SEC Staff (Michael V. Wible, Esq.), dated August 23, 1991, copy enclosed.)

Since that no-action relief was granted there has been significant and varied activity to craft the Rehabilitation Plan and its several amendments, as well as much testimony during numerous Court proceedings resulting in the Confirmation Order. Although the fundamental goal of the rehabilitation proceeding has not changed, the methods to be used to achieve that goal have become more clearly defined and established as set forth below.

The Plan is complex and deals with many diverse and often conflicting issues to achieve its goal of safeguarding the interests of policyholders. The Plan is based on the statutory direction to reform and revitalize an insolvent life insurance company, rather than simply liquidate it, through prompt application of appropriate corrective measures. In its simplest terms, the Plan provides for the transfer of substantially all of the assets and liabilities of Mutual Benefit Life to a surviving stock insurance company, MBL Life Assurance Corporation ("MBLLAC") under an assumption reinsurance agreement forming part of the Plan, the transfer of the voting stock of MBLLAC held by Mutual Benefit Life to a Stock Trust established by the Plan having the Commissioner of Insurance of the State of New Jersey as Trustee, the retention of those assets and liabilities not transferred by Mutual Benefit Life to MBLLAC within a liquidating trust and the eventual liquidation of Mutual Benefit Life. MBLLAC is currently a wholly owned

subsidiary of Mutual Benefit Life with a Board of Directors appointed by the Commissioner of Insurance pursuant to provisions of the Plan.

Among the assets to be assumed by MBLLAC (or its wholly owned holding corporation) are Mutual Benefit Life's majority interest in Markston. Among the assets to be retained within the liquidating trust and not transferred to MBLLAC is its interest in Green Hill (formerly Mutual Benefit Financial Service Company). It is noteworthy that in connection with the Plan the business of Green Hill will be wound up, (a process that has already begun) and that entity will be liquidated. Green Hill had, prior to the rehabilitation proceeding, been involved in the origination of various limited partnerships and the offer and sale of general securities in addition to its activity as described herein. In light of the potential for continued liability for some of their offerings a decision was made to not continue its business.

Markston is an investment adviser registered under the Investment Advisers Act of 1940 and is the investment adviser to Benefit and Growth. Green Hill is a broker dealer registered under the Securities Exchange Act of 1934 and is also registered as an investment adviser under the Investment Advisers Act of 1940. Green Hill is the investment adviser to MAP and to VCA-7 and is the principal underwriter for Benefit, Growth, MAP and VCA-7. FPIC, a wholly owned subsidiary of MBLLAC, is an investment adviser registered under the Investment Advisers Act of 1940 and a broker-dealer registered under the Securities Exchange Act of 1934.

It is proposed that: (1) FPIC succeed Green Hill as the investment adviser to MAP and to VCA-7 and as the principal underwriter of Benefit, Growth, MAP and VCA-7 prior to implementation of the Plan and continue as such following implementation of the Plan, (2) MBLLAC succeed Mutual Benefit Life as party to a Service Agreement with Benefit, Growth, MAP and with VCA-7 following implementation of the Plan, and (3) Markston, as a subsidiary of MBLLAC, continue as the investment adviser to Benefit and Growth following implementation of the Plan, with shareholder or contractholder approval not being required because of no change in actual control or management of Markston or FPIC in the unique situation created by the Plan and the related rehabilitation proceedings.

It is not possible to identify substantially similar situations in which the staff has given no action relief. The nature of this rehabilitation proceeding, involving seizure of Mutual Benefit Life by a state regulator pursuant to statutory authority, judicial oversight of day to day operation, and significant questions of public policy, along with keen media interest, is unprecedented. However, although the factual circumstances may differ, the staff has given no action relief where a registered investment adviser transferred its advisory contracts to another corporation owned by the same controlling shareholders (See Spears, Benzak, Salomon & Farrell, Inc. January 21, 1986); where as a result of a corporate reorganization there was the liquidation and transfer of assets from one adviser entity to another owned by the same controlling person (See Templeton Investment Counsel Ltd., January 22, 1986); where as a result of changes in Japanese law a transfer of advisory responsibility was made from

one entity to another advisory entity under common control (See Nikko International Capital Management Co., Ltd., May 1, 1987).

The same rationale would apply in those circumstances. Control of MBLLAC, as with Mutual Benefit Life, remains with the Commissioner of Insurance of New Jersey pursuant to state statutory guidelines and judicial oversight. The principal advisory personnel at both Markston and FPIC, as the successor to Green Hill, remain unchanged. The management committee at Markston remains unchanged. At FPIC a majority of the principal offices and directors held similar positions at Green Hill. (Because of an impending change in the location of the principal offices of Green Hill to New Jersey, the principal office location of FPIC, certain of the Green Hill principal officers and directors, but none of the advisory personnel, have determined not to relocate. Advisory personnel of FPIC are employees of Mutual Benefit Life and will become employees of MBLLAC on the Closing Date.)

In our view the situations described do not constitute a change of actual control or management of the investment advisor so as to result in an assignment of its advisory contract nor are the abuses the Act is intended to eliminate present.

Regarding Markston, we do not believe that the transfer of the common voting stock of the majority partner of Markston to MBLLAC under the unique situation created by the Plan and the related rehabilitation proceedings should be deemed to constitute an assignment of the investment advisory agreement as no change of actual control or management has occurred, thereby

satisfying the requirements of Rule 2a-6 under the Act. Nor is it an "assignment" as defined in Section 2(a)(4) of the Act.

Even if it were determined that the transfer of the common voting stock of the majority partner of Markston to MBLLAC under the terms of the Plan constitutes an assignment of the investment advisory agreement so as to adversely impact the no-action relief granted August 23, 1991 to Markston and the other companies set forth (excluding FPIC which was not then in existence), shareholder voting on a new advisory agreement should not be required. There will be no change in the terms of advisory or distribution agreements, no change in fees or expenses borne by the investment companies, and no less solvency of the adviser and underwriter.

Even if the proposed transfer of responsibility from Green Hill to FPIC for providing underwriting services to Benefit, Growth, MAP and VCA-7, were deemed to involve a new agreement, the Act would not require any approval, other than that of each entity's Board of Directors, including a majority of the disinterested directors.

Regarding the transfer of responsibility from Green Hill to FPIC for investment advisory services to MAP and to VCA-7 under the unique situation created by the Plan and the related Rehabilitation proceedings, we do not believe that such action constitutes an assignment of the investment advisory agreement causing a termination of such agreement or requiring a shareholder or interestholder vote. Even if such action constitutes an assignment, we do not believe that shareholder or interestholder voting on the new agreement should be required.

With both Markston and FPIC the Board of Directors or Management Committee, as the case may be, of Benefit, Growth, MAF and VCA-7, including a majority of the disinterested director or committee members of each, will have considered the facts and circumstances and have taken such actions as they deem appropriate in light of those facts and circumstances. Part of that action is the annual evaluation required by Section 15(c) of the Act and the annual approval required by Sections 15(a)(2) and 15(b)(1) of the Act. One such fact is the availability of staff no-action relief.

Additionally, the investment companies emphasize that a solicitation of shareholders or interestholder approval of new agreements could also precipitate mass redemptions with adverse consequences for not only the investment companies, but also the shareholders or 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 or interestholders. Mutual Benefit Life's situation received widespread publicity which, unfortunately, precipitated a "run on the bank." 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 could not be in the best interests of the investment companies or their shareholders or interestholders.

In conclusion, for the foregoing reasons based upon the unique situation, we respectfully submit that the Commission staff should grant the

no-action relief requested. We would appreciate a response as soon as possible but in no event later than March 1, 1994.

This letter follows up a meeting held with you and certain other members of the staff on January 7, 1994 at which the matters set forth herein were discussed. Please call me or Gary O. Cohen ((202) 457-5107) at Freedman, Levy, Kroll & Simonds should you wish to discuss this matter.

Very truly yours,

Eugene J. Ciarkowski
Vice President - Subsidiary Operations
and Secretary

EJC:ap
Enclosures (3)

cc: Frank D. Casciano, Esq.
Gary O. Cohen, Esq.
Wendell M. Faria, Esq.
Mr. Robert L. Dorsey
Michael V. Wible, Esq.
Charles C. Spraque, Esq.

Mutual Benefit Life
520 Broad Street, Newark, NJ 07102-3184
1-201-481-8169 FAX 1-201-268-4334

Eugene J. Ciarkowski
Vice President—Subsidiary Operations
and Secretary

March 11, 1994

BY HAND DELIVERY
Wendell M. Faria, Esq.
Deputy Chief
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")
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First Priority Investment Corporation ("FPIC")
File No. 801-44696 and No. 8-46334

Dear Mr. Faria:

At the Commission staff's request, we are writing to supplement our letter to you dated February 8, 1994. 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 or other action if Markston and Green Hill, to the extent

required, continue to perform under their respective investment advisory agreements (including service and management agreements) and principal underwriting agreements (including distributor's and sales agreements) as subsidiaries of MBL Life Assurance Corporation ("MBLLAC"), the successor to Mutual Benefit Life Insurance Company in Rehabilitation ("Mutual Benefit Life") under the Mutual Benefit Life rehabilitation proceedings, with FPIC succeeding to those functions and responsibilities currently performed by Green Hill upon compliance by FPIC with all state licensing and registration requirements either prior to or subsequent to implementation of the Rehabilitation Plan (the "Plan"). Additionally, MBLLAC would succeed Mutual Benefit as party to Service Agreements with Benefit, Growth, MAP and VCA-7 following implementation of the Plan. Performance of the respective functions would continue without further shareholder or interestholder vote. These transactions, as described in greater detail in our February 8th letter, are a result of the highly unusual circumstances created by the state rehabilitation proceeding involving Mutual Benefit Life.

In that regard we wish to supplement our letter to note that the transactions referred to above do not present the abuses that the Investment Company Act of 1940 (the "Act") is intended to eliminate. The legislative history of Section 1(b)(6) of the Act 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." (Report 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).) 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 transactions referred to above do not present any of the abuses associated with trafficking in agreements. The transactions will be effected in connection with the implementation of the Plan ordered by the Superior Court of New Jersey and carried out by the Rehabilitator under the Court's Confirmation Order, as described in our February 8th letter. 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. 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. The implementation of the Confirmation Order by the Rehabilitator, including the transactions referred to above, will involve no sale or purchase of advisory or underwriting contracts. In addition, such implementation and transactions will generate 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.

The transactions referred to above, including the succession of FPIC for Green Hill as either investment adviser or distributor, as appropriate, are solely incidential to the implementation of the Plan and the Court's Confirmation Order and do not involve the trafficking in advisory and underwriting agreements that the Act was intended to eliminate.

Should you wish to discuss this matter, please call me or Gary O. Cohen, Esq. ((201) 457-5107) at Freedman, Levy, Kroll & Simonds.

Very truly yours,

Eugene J. Ciarkowski
Vice President - Subsidiary Operations
and Secretary

EJC:ap

cc: Frank D. Casciano, Esq.
Gary O. Cohen, Esq.
Mr. Robert L. Dorsey
Michael V. Wible, Esq.
Charles C. Sprague, Esq.

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

[Pub. Avail.: March 30, 1994]
Our Reference No. IP-2-94
Mutual Benefit Fund et al.

Your letters of March 11, 1994 and February 8, 1994, request our assurance that we would not recommend enforcement action to the Commission if the entities described in your letters continue to perform under their respective investment advisory agreements (including service and management agreements) and principal underwriting agreements (including distributor's and sales agreements) (the "Agreements") without further interestholder or shareholder vote.

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 ("MBL"). In response to the appointment of the rehabilitator, certain entities affiliated with MBL sought no-action assurance from the Division's staff with regard to the status of their investment advisory and principal underwriting agreements. By letter dated August 23, 1991, the staff provided such assurance, which permitted the entities to continue to perform under their respective investment advisory agreements and principal underwriting agreements without further interestholder vote.

Because of certain events that have transpired recently in connection with the rehabilitation of MBL, your letters now seek similar no-action assurance with respect to the Agreements. Your letters indicate that pursuant to the Rehabilitation Plan, MBL will transfer substantially all of its assets and liabilities to a surviving stock insurance company called MBL Life Assurance Corporation. As described more specifically in your letters, this transfer arguably could be deemed to effect an assignment of the Agreements under Section 2(a)(4) of the Investment Company Act of 1940 (the "1940 Act").

Based upon the facts and representations set forth in your letters, 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., Mutual Benefit Variable Contract Account-7, Markston Investment Management ("Markston"), Green Hill Financial Service Company ("Green Hill"), and First Priority Investment Corporation, pursuant to Sections 2(a)(4), 15(a)(4), and 15(b)(2) of the 1940 Act, if Markston and Green Hill, to the extent required, continue to perform under the Agreements without further shareholder or interestholder vote. Because our position is based on the facts and representations in your letters, you should note that different facts or representations may require a

different conclusion. Further, this response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the issues presented. 1/

Christopher Sprague

C. Christopher Sprague
Senior Counsel

1/ The Division declines to express an opinion on whether the facts and circumstances presented in your letters would satisfy Rule 2a-6 under the 1940 Act. See Investment Company Act Release No. 10809 (Aug. 6, 1979), note 5.