



DIVISION OF
INVESTMENT MANAGEMENT

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

November 5, 1998

Mr. Frederick L. Feldkamp
Foley & Lardner
One IBM Plaza
330 North Wabash Avenue, Suite 3300
Chicago, Illinois 60611-3608

ACT ICA
SECTION _____
RULE 2a-7
PUBLIC
AVAILABILITY 11/5/98

Re: New Center Asset Trust

Dear Mr. Feldkamp:

Your letter of November 4, 1998 requests our guidance concerning the application of certain provisions of rule 2a-7 under the Investment Company Act of 1940 to the commercial paper issued by New Center Asset Trust, a Delaware trust ("NCAT"). Specifically, you request our guidance concerning (i) whether the commercial paper issued by NCAT is "grandfathered" for purposes of rule 2a-7 and (ii) the definition of "restricted special purpose entity" in paragraph (c)(4)(ii)(D)(2) of the rule.

You state that NCAT was formed in May of 1993 to address liquidity and credit needs of General Motors Acceptance Corporation and its affiliates ("GMAC"), General Motors Corporation ("GM") and certain other subsidiaries and affiliates of GM. NCAT is a Delaware business trust that issues commercial paper notes ("Notes") under two programs (the "Programs"). You state that NCAT is structured as a bankruptcy-remote special purpose entity under guidelines of the NRSROs that rate NCAT's Notes and that the Notes issued under each Program are rated in the highest short-term rating category for debt obligations by two NRSROs. You also assert that Notes issued under the Programs are structured to meet the credit quality and maturity standards required for investment by money market funds.

Your letter states that (1) NCAT has executed over \$850 billion of trades involving the Notes, (2) as of September 11, 1998 the maximum aggregate amount of Notes that could be issued under the NCAT Programs was \$10.5 billion and (3) over \$5.3 billion of Notes are presently outstanding. You note that money market funds are a principal purchaser of NCAT's Notes.

The Commission recently adopted amendments to rule 2a-7 that, among other things, revised the rule to accommodate the acquisition of asset backed securities ("ABSs") by money market funds.¹ An ABS is a fixed income security issued by a "special purpose entity" ("SPE") substantially all of the assets of which consist of "qualifying assets." An SPE is a trust or other entity organized for the sole purpose of issuing securities that entitle holders to receive payments from the cash flow of the qualifying assets. Qualifying assets are either fixed or revolving financial assets that by their terms convert into cash within a finite time period.²

Rule 2a-7 provides generally that a money market fund may not invest more than 5% of its assets in a single issuer.³ For purposes of this issuer diversification standard, the rule generally treats the SPE as the issuer of the ABS.⁴ An exception to this treatment, however, is made with respect to an issuer of qualifying assets whose obligations constitute 10% or more of the principal amount of all qualifying assets held by the SPE ("10% obligor"). Funds must treat a 10% obligor as if it issued a proportionate amount of the ABS for diversification purposes.⁵ This "look through" provision is designed to ensure that a fund does not indirectly invest more than 5% of its assets in a particular issuer.

You state that NCAT's assets consist primarily of ABSs issued by SPEs that are formed for the purpose of acquiring retail and wholesale automotive receivables and other financial assets originated by GMAC ("GMAC Receivables"). In order to be eligible for acquisition by NCAT, the ABSs it acquires ("Issuer Assets") must (1) be supported by diversified pools of GMAC Receivables, (2) meet eligibility requirements established under a liquidity agreement between NCAT and certain banks and (3) be acceptable to the NRSROs that rate NCAT's Notes. You state that no approval is required from holders of Notes in order to change qualification requirements for Issuer Assets.

¹ Rule 2a-7 [17 CFR 270.2a-7] was amended by the Commission on December 2, 1997. See Technical Revisions to the Rules and Forms Regulating Money Market Funds, Release No. IC-22921 (Dec. 2, 1997) [62 FR 64968 (Dec. 9, 1997)] ("Release 22921").

² See rule 2a-7(a)(3) (definitions of ABS, SPE and qualifying assets).

³ Rule 2a-7(c)(4)(i)(A). With respect to single state tax-exempt money market funds, the 5% limit applies only with respect to 75% of their assets. Rule 2a-7(c)(4)(i)(B).

⁴ Rule 2a-7(c)(4)(ii)(D)(I).

⁵ Rule 2a-7(c)(4)(ii)(D)(I)(i), (ii) (diversification with respect to 10% obligors of ABSs). With respect to investments in ABSs ("primary ABSs") whose qualifying assets include 10% obligors that are also ABSs ("secondary ABSs"), funds must "look through" to any 10% obligor of a primary ABS, and to any 10% obligor of a secondary ABS, and treat each 10% obligor as an issuer of the portion of the primary ABS that each represents. *Id.*; see Release 22921, *supra* note 1, at nn.54-56 and accompanying text, and the Appendix to the Release.

You state that the GMAC Receivables each represent obligations relating to the purchase of automobiles (by dealers and retail customers for purchase, resale or lease). You also state that, at present, eligibility requirements for NCAT's Issuer Assets preclude any obligor with respect to GMAC Receivables from representing more than 2% of the pool of assets supporting such Issuer Asset. With each Issuer Asset diversified in this manner, you note that there is no limitation imposed by NCAT or the NRSROs on the aggregate size of an Issuer Asset.

Each Issuer Asset of NCAT may (and, in order to facilitate management of NCAT's assets, generally does) represent more than 10% of the total assets of NCAT at the time the Issuer Asset is created. Under rule 2a-7, the SPE which (1) acquires GMAC Receivables and (2) creates an Issuer Asset is deemed to be the issuer of such ABS. Therefore, each SPE that issues an Issuer Asset that comprises more than 10% of NCAT's total assets is deemed by the rule to be a "10% obligor" with respect to NCAT. Money market funds that purchase NCAT's Notes, therefore, must establish compliance with the rule's issuer diversification standards with respect to each SPE that is a 10% obligor.

You state that GMAC, as administrator of NCAT, has been advised that certain money market funds have determined not to acquire Notes issued by NCAT unless certain questions concerning the applicability of the rule's 10% obligor provisions can be clarified in order to permit funds to disregard certain 10% obligors for purposes of the rule's diversification standards. You assert that it would be difficult to restructure the Issuer Assets of NCAT in a manner that would permit funds to disregard the SPEs that are the 10% obligors that are authorized to issue Issuer Assets.⁶

1. Grandfathered Securities

Your first question concerns how rule 2a-7's "grandfathering" provisions relate to NCAT and similar asset-backed commercial paper programs that continuously issue or rollover commercial paper ("ABS CP"). When it adopted amendments to rule 2a-7, the Commission recognized that implementing the amendments could adversely effect not only funds holding securities that no longer conformed to the rule, but also issuers and providers of credit support for those securities and the money markets generally. To minimize disruption to both money market funds and financial markets as a result of adopting the amendments, the Commission "grandfathered" certain securities first issued on or before February 10, 1998 ("grandfather date") that do not meet certain specified requirements of the amended rule.⁷ These

⁶ Funds may disregard 10% obligors for purposes of issuer diversification with respect to an ABS if the ABS is subject entirely to a guarantee issued by a non-controlled person. See rule 2a-7(c)(4)(i). Funds also may exclude from treatment as 10% obligors certain "restricted" SPEs that do not issue ABSs to anyone other than another specific ABS issuer. See rule 2a-7(c)(4)(ii)(D)(2).

⁷ Funds must comply with the amended rule by July 1, 1998, except with respect to the "grandfathered securities." See Release 22921, supra note 1, at nn.97-102 and accompanying text.

requirements relate to: (1) the required ratings for guarantees and ABSs; (2) notice of substitution of a credit support provider; (3) the recovery of principal and interest through guarantees or demand features; (4) determining the maturity of ABSs; and (5) the exercisability of conditional demand features.⁸ Funds may continue to hold or acquire a “grandfathered security” if the security is *first issued* on or before the grandfather date and funds satisfy all other provisions of the amended rule with respect to the grandfathered security.

With respect to a security that is continuously issued or rolled over pursuant to a continuous offering program, it is *first issued*, for purposes of determining whether it is a grandfathered security, on the date it was issued or rolled over, not on the date that the program was organized. Therefore, securities issued or rolled over after February 10, 1998 are not grandfathered securities.

Your letter states that NCAT and other programs, and the ABS CP they issue, typically are continually offered over an extended time period and investors periodically rollover their holdings of the programs’ ABS CP. You assert, however, that unlike other issuers, once an asset-backed commercial paper program is organized, the program sponsor cannot readily amend the program’s structure in response to regulatory changes. You note the Commission’s objective of avoiding significant disruptions to financial markets as a result of the amendments to rule 2a-7, and argue that when applying the grandfathering provisions to ABS CP programs, the Commission should consider the difficulties that NCAT and similar programs would face if required to revise their structures with respect to the new ABS diversification standards or to other rule amendments.⁹

We agree. To alleviate unintended adverse consequences for money market funds and other market participants, we would not recommend enforcement action against a money market fund that: (1) acquires ABS CP issued by an SPE organized on or before February 10, 1998;¹⁰ (2) treats the ABS CP as a grandfathered security *first issued* on the date the program was organized;¹¹ and (3) satisfies all applicable provisions of rule 2a-7 with respect to the ABS CP, except the “look-through” to 10% obligors.¹²

⁸ *Id.*; see rule 2a-7(a)(8)(i) (demand features generally), (a)(8)(ii) (demand features for ABSs), (a)(10)(ii)(B) (ABSs ratings), (a)(10)(iii)(A) (guarantee ratings), (a)(10)(iii)(B) (notice of substitution), (a)(15) (definition of guarantee), (c)(3)(iv)(B) (exercisability of conditional demand features).

⁹ In the case of NCAT, you state that revisions to the Programs would require obtaining consents from the banks that are parties to the liquidity agreement with NCAT.

¹⁰ This position applies only with respect to ABS CP that is continuously issued or rolled over to money market funds in connection with a commercial paper program, shelf registration or similar continuous offering arrangement.

¹¹ As grandfathered securities, funds may acquire ABS CP in reliance on this position after February 10, 1998, despite their non-compliance with rule 2a-7(a)(8)(i) (demand features generally), (a)(8)(ii) (demand features for ABSs), (a)(10)(ii)(B) (ABSs ratings), (a)(10)(iii)(A) (guarantee ratings), (a)(10)(iii)(B) (notice of
(continued . . .)

We believe, however, that neither money market funds nor sponsors of ABS CP programs should be able to rely on this interpretation of the rule 2a-7 grandfathering provisions with respect to 10% obligors whose obligations were acquired by an ABS CP program after July 1, 1998, the compliance date for the recent amendments to rule 2a-7. The "look-through" to 10% obligors, therefore, may be disregarded in reliance on this position only with respect to obligors whose obligations were acquired by the SPE of an ABS CP program on or before July 1, 1998. An obligor whose obligations are acquired by an SPE after July 1, 1998, and who is or becomes a 10% obligor, will be deemed to be a proportionate issuer of the ABS CP issued by the SPE in accordance with the issuer diversification standards of rule 2a-7.¹³

2. *Restricted Special Purpose Entities*

Your second question relates to the definition of "restricted special purpose entity" ("restricted SPE") in paragraph (c)(4)(ii)(D)(2) of rule 2a-7. Rule 2a-7 provides that a restricted SPE is not a 10% obligor for purposes of the rule's issuer diversification standards, regardless of the amount of its ABS held by another ABS issuer. An SPE qualifies as a "restricted SPE" if it only issues ABS to one specific ABS issuer, and if its securities are held only by that ABS issuer and by companies that control, are controlled by, or are under common control with the SPE and that are not themselves SPEs issuing ABS.¹⁴ Because a money market fund can only invest in a restricted SPE by acquiring the securities of the one ABS issuer that holds the restricted SPE's ABS, there is no possibility that a fund will indirectly invest more than 5% of its assets in a restricted SPE.

In the future, NCAT would like to acquire ABSs from other SPEs organized by GMAC that would issue securities only to NCAT and to affiliates of GMAC that are not SPEs issuing ABSs. You state that the securities issued to the GMAC affiliates would be securities that would preclude the exercise of voting rights until the securities issued to NCAT are paid. As a consequence, you assert that the GMAC affiliates would not "control" these SPEs, as that term is defined in the Investment Company Act.¹⁵ You request our guidance whether money market

substitution), (a)(15) (definition of guarantee), and (c)(3)(iv)(B) (exercisability of conditional demand features).

¹² ABS CP acquired in reliance on this position, therefore, is deemed to be issued entirely by the SPE that issued the ABS CP, despite the existence of 10% obligors that otherwise would be counted pursuant to paragraphs (c)(4)(ii)(D)(I)(i) and (ii) of the rule. A fund that acquires ABS CP issued pursuant to a program organized after February 10, 1998, however, may not treat the ABS CP as a grandfathered security, and may not disregard any 10% obligors of that ABS CP for diversification purposes.

¹³ Rule 2a-7(c)(4)(ii)(D)(I)(i), (ii).

¹⁴ Rule 2a-7(c)(4)(ii)(D)(2).

¹⁵ See Section 2(a)(9) of the Investment Company Act [15 U.S.C. 80a-2(a)(9)] (definition of control).

funds that acquire NCAT's ABSs may treat these SPEs as restricted SPEs for purposes of rule 2a-7, and so may exclude them from treatment as 10% obligors for purposes of the rule's issuer diversification standards, even though these SPEs would not be controlled by the GMAC affiliates that would hold their securities.

While we express no opinion on whether GMAC and its affiliates would control the SPEs for purposes of the Investment Company Act, we note that you represent that GMAC would be responsible for organizing these SPEs. Based on these representations, we would not recommend enforcement action against a money market fund that treats an SPE that is organized by GMAC and that issues securities only to NCAT and to GMAC affiliates as a restricted SPE. This conclusion is based on your representation that the GMAC affiliates would not sell any securities of the SPEs that they hold other than to NCAT or to another GMAC affiliate that is not an SPE issuing ABSs.

We note that these conclusions are based on the facts and representations in your letter, and any different facts or representations might require a different conclusion. Moreover, this response expresses our position on a Commission enforcement action only, and does not express any legal conclusions on the issues presented.

Sincerely,



Cynthia Gurnee Pugh
Senior Counsel

FOLEY & LARDNER

ATTORNEYS AT LAW

CHICAGO
DENVER
JACKSONVILLE
LOS ANGELES
MADISON
MILWAUKEE
ORLANDO

ONE IBM PLAZA
330 NORTH WABASH AVENUE, SUITE 3300
CHICAGO, ILLINOIS 60611-3608
TELEPHONE (312) 755-1900
FACSIMILE (312) 755-1925

SACRAMENTO
SAN DIEGO
SAN FRANCISCO
TALLAHASSEE
TAMPA
WASHINGTON, D.C.
WEST PALM BEACH

WRITER'S DIRECT LINE
(312) 755-2516

EMAIL ADDRESS
ffeldkamp@foleylaw.com

CLIENT/MATTER NUMBER
073487-0103

November 4, 1998

Mr. Kenneth J. Berman
Associate Director of Investment Regulations
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Mail Stop 5-6
Washington, DC 20549

Re: New Center Asset Trust

Dear Mr. Berman:

This letter is submitted on behalf of New Center Asset Trust, a Delaware trust ("NCAT"), and its administrator, General Motors Acceptance Corporation, to request your guidance concerning the application of certain provisions of rule 2a-7 under the Investment Company Act of 1940 to the commercial paper ("CP") issued by NCAT. Specifically, GMAC and NCAT request your guidance concerning (1) whether such CP is "grandfathered" for purposes of rule 2a-7 and (2) the definition of "restricted special purpose entities" under rule 2a-7.

NCAT was formed in May of 1993 for the purpose of issuing commercial paper notes (the "Notes") under two programs (the "Programs") supported by a liquidity facility (the "Liquidity Facility"). The Liquidity Facility was part of a package of bank facilities structured to address liquidity and credit needs of General Motors Acceptance Corporation and its affiliates ("GMAC"), General Motors Corporation ("GM") and certain other subsidiaries and affiliates of GM.

Notes issued under each Program are rated in the highest short-term rating category for debt obligations by two NRSROs. NCAT is structured as a bankruptcy-remote special-purpose entity under guidelines of the NRSROs that rate NCAT's Notes and Notes issued under the Programs are structured to meet the credit quality and maturity standards of rule 2a-7 required for investment by money market funds.

As administrator of NCAT, GMAC has advised us that (1) NCAT has executed over \$850 billion of trades involving Notes supported by the Liquidity Facility, (2) as of September 11, 1998, the maximum aggregate amount of Notes that could be issued under the NCAT Programs was

Mr. Kenneth J. Berman

November 4, 1998

Page 2

\$10.5 billion and (3) over \$5.3 billion of Notes are presently outstanding. Money market fund purchases represent a primary funding source for NCAT's Notes. NCAT and other programs that issue asset-backed securities ("ABSs") in the form of CP, and the ABS CP they issue, typically are continually offered over an extended time period and investors periodically rollover their holdings of the programs' ABS CP.

The Commission recently adopted amendments to rule 2a-7 that, among other things, revised the rule as it relates to regulating the acquisition of ABSs by money market funds. An ABS is a fixed income security issued by a "special purpose entity" ("SPE") substantially all of the assets of which consist of "qualifying assets." Rule 2a-7 provides generally that money market funds may not invest more than five percent of their assets in a single issuer. For purposes of this diversification standard, the rule generally treats the SPE as the issuer of the ABS for purposes of compliance with the rule's issuer diversification standards.

NCAT's assets consist primarily of ABSs issued by SPEs that are formed for the purpose of acquiring retail and wholesale automotive receivables and other financial assets originated by GMAC ("GMAC Receivables"). In order to be eligible for acquisition by NCAT, the ABSs it acquires ("Issuer Assets") must (1) be supported by diversified pools of GMAC Receivables, (2) meet eligibility requirements established under the agreement with lenders participating in the Liquidity Facility and (3) be acceptable to the NRSROs that rate NCAT's Notes. No approval is required from holders of Notes in order to change qualification requirements for Issuer Assets.

The GMAC Receivables each represent obligations relating to the purchase of automobiles (by dealers and retail customers for purchase, resale or lease). At present, eligibility requirements for NCAT's Issuer Assets preclude any obligor with respect to GMAC Receivables from representing more than 2% of the pool of assets supporting such Issuer Asset. With each Issuer Asset being diversified in this manner, there is no limitation imposed by NCAT or the NRSROs on the aggregate size of an Issuer Asset.

Each Issuer Asset of NCAT may (and, in order to facilitate management of NCAT's assets, generally does), therefore, represent more than 10% of the total assets of NCAT at the time the Issuer Asset is created. Under rule 2a-7, the SPE which (1) acquires GMAC Receivables and (2) creates an Issuer Asset is deemed to be the issuer of such ABS. Therefore, each SPE which issues an Issuer Asset that comprises more than 10% of NCAT's total assets is deemed by rule 2a-7 to be a "10% obligor" with respect to NCAT. Money market funds that purchase NCAT's Notes, therefore, may be required to establish compliance with the rule's issuer diversification requirements with respect to each SPE that is a 10% obligor.

GMAC, as administrator of NCAT, has been advised that certain money market funds have determined not to acquire Notes issued by NCAT unless certain questions concerning applicability of the rule's 10% obligor provisions can be clarified in order to permit funds to disregard certain 10% obligors for purposes of the rule's diversification standards. It would be difficult to restructure the current Issuer Assets of NCAT in order to avoid 10% obligor provisions that are applied to the SPEs currently authorized by the Liquidity Facility to be issuers of Issuer Assets. In the case of NCAT, revisions to the Programs would require obtaining consents from each of the banks that are parties to the liquidity agreement.

Mr. Kenneth J. Berman
November 4, 1998
Page 3

In light of the Commission's stated objective of avoiding significant disruptions to financial markets as a result of the amendments to rule 2a-7, and to alleviate unintended adverse consequences for funds and other market participants, GMAC and NCAT respectfully request a letter confirming that you would not recommend enforcement action against a money market fund that (1) treats the Notes as a grandfathered security *first issued* on the date the program was organized and (2) except as provided below, satisfies all applicable provisions of rule 2a-7 with respect to the ABS CP, except the "look-through" to 10% obligors. This position, however, would apply only with respect to obligors held by NCAT on or before July 1, 1998, the compliance date for the amendments to rule 2a-7.

In addition, funds may exclude from treatment as 10% obligors certain "restricted" SPEs that do not issue ABSs to anyone other than a single ABS issuer. *See* rule 2a-7(c)(4)(ii)(D)(2). Specifically, that section provides that restricted SPEs which otherwise qualify as a 10% obligor "shall not be deemed to have issued any portion of the assets of" the SPE which acquires ABSs of the restricted SPE. Under rule 2a-7(c)(10)(v)(B), money market funds must maintain records of "(a)ny determination that an Asset Backed Security [*i.e.*, NCAT's CP Notes] will not have, or is unlikely to have, Ten Percent Obligor deemed to be issuers of all or a portion of that Asset Backed Security."

With respect to future transactions, NCAT proposes to acquire ABSs from other SPEs organized by GMAC that would issue securities only to NCAT and to affiliates of GMAC that are not SPEs issuing ABSs. The securities issued to the GMAC affiliates would be securities that would preclude the exercise of voting rights until the securities issued to NCAT are paid. As a consequence, the GMAC affiliates would not "control" these SPEs, as that term is defined in Section 2(a)(9) of the Investment Company Act. The GMAC affiliates would not sell any securities of the SPEs that they hold other than to NCAT or to another GMAC affiliate that is not an SPE issuing ABSs. Guidance is hereby requested as to whether money market funds that acquire NCAT's ABSs may treat these SPEs as restricted SPEs for purposes of rule 2a-7, and so may exclude them from treatment as 10% obligors for purposes of the rule's issuer diversification standards, even though these SPEs would not be controlled by the GMAC affiliates that would hold their securities.

Very truly yours,



Frederick L. Feldkamp

cc: Ms. Nancy L. Bugg
Richard V. Kent, Esq.
Robert L. Schwartz, Esq.
Mr. David C. Walker