[Pub. Avail.: March 31, 1998]

Our Ref No. 97-573-CC
Wells Fargo Bank, N.A.
File No. 132-3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter of March 20, 1998 requests our assurance that we would not recommend that the Commission take enforcement action under Section 15(a) of the Investment Company Act of 1940 if, as more fully described in your letter, Wells Fargo Bank, N.A. ("Wells Fargo") contracts with Wells Capital Management ("WCM") to act as sub-adviser for certain registered investment companies without obtaining shareholder approval of the sub-advisory arrangement with WCM initially, or in the future if Wells Fargo reallocates investment advisory responsibilities and fees between itself and WCM.

Facts

Wells Fargo is a national bank that serves as the investment adviser to certain open-end investment companies registered under the Investment Company Act ("Funds").[1] WCM is a wholly owned subsidiary of Wells Fargo. Wells Fargo recently transferred its investment advisory operations, except those relating to the Funds, to WCM ("the Reorganization"). In connection with that transfer, Wells Fargo investment advisory personnel became employees of WCM. You represent that the portfolio managers to the Funds became dual employees of Wells Fargo and WCM so that they could continue to manage the Funds as employees of Wells Fargo.

You state that to complete the Reorganization of Wells Fargo's investment advisory operations into WCM, Wells Fargo intends to appoint WCM to act as a sub-adviser to each Fund so that the portfolio managers may manage the Funds in their capacity as employees of WCM. You state that, after WCM's appointment as sub-adviser, Wells Fargo will continue to provide administrative, supervisory and other support to WCM and the Funds, and will remain the primary investment adviser to the Funds. Wells Fargo will pay WCM a portion of the investment advisory fee that it receives from each Fund for the sub-advisory services furnished by WCM. You also state that, after the initial appointment of WCM as sub-adviser, Wells Fargo might periodically reallocate investment advisory responsibilities and advisory fees between itself and WCM.

You represent that neither WCM's appointment as a sub-adviser to each Fund, nor any subsequent reallocation of investment advisory responsibilities or fees between Wells Fargo and WCM, will result in any material change in the nature or the level of the actual investment advisory and administrative

[1] These Funds are the series of Stagecoach Funds, Inc., Overland Express Funds, Inc., Life & Annuity Trust and Master Investment Trust.

services provided to each Fund. Further, you represent that neither WCM's appointment as sub-adviser, nor any subsequent reallocations of investment advisory responsibilities or fees between Wells Fargo and WCM, will result in an increase in the advisory fee paid by each Fund. You also represent that the same personnel who currently manage the Funds will continue to provide those services immediately after WCM becomes the Fund's sub-adviser.

You represent that the sub-advisory agreement between Wells Fargo and WCM will be in writing and will be amended in the future to reflect any reallocation of investment advisory responsibilities or fees. The agreement will comply with all of the provisions of Section 15(a) except the shareholder approval requirement. You further represent that each Fund will provide written notice to its shareholders, no later than the mailing of the Fund's next regularly scheduled mailing to shareholders, that WCM will act as sub-adviser to the Fund, and that investment advisory responsibilities and fees may be reallocated periodically between Wells Fargo and WCM. Each Fund also will provide comparable notice to prospective shareholders until the Fund amends its registration statement to reflect the existence of the sub-advisory agreement and the possibility of future reallocations.

Analysis

Section 15(a) of the Investment Company Act provides generally that no person may serve as an investment adviser to a registered fund except pursuant to a written contract that, among other things, has been approved by the vote of a majority of the fund's outstanding voting securities. Any material change to an existing advisory contract creates a new advisory contract that must be approved in accordance with Section 15(a).

Although sub-advisory contracts generally are subject to the shareholder approval requirement of Section 15(a), the staff has agreed not to recommend enforcement action under that provision in other situations in which a new advisory contract was created from a pre-existing contract,[2] or fees were reallocated between

[2] See Franklin Templeton Group of Funds (pub. avail. July 23, 1997) (staff would not recommend enforcement action under Section 15(a) if fund replaced an existing advisory contract, which covered both advisory and administrative services, with two new contracts that covered the services separately, without obtaining shareholder approval of the new advisory contract); Principal Preservation Portfolios, Inc. and Prospect Hill Trust (pub. avail. Jan. 1, 1996) (where one feeder fund reorganized to become a separate class of another feeder fund of the same master fund and the surviving feeder fund became a stand-alone fund, the staff would not recommend enforcement action under Section 15(a) if the surviving

the primary adviser and a sub-adviser,[3] provided that the new arrangement or amendment did not materially change the advisory relationship or terms of the advisory contract previously approved by shareholders.

You contend that shareholder approval of WCM's appointment as a sub-adviser to each Fund, and any subsequent reallocation of investment advisory responsibilities and fees between Wells Fargo and WCM, is unnecessary because neither is, or will be, a material change to any existing advisory contract or advisory relationship with the Funds. In essence, the only change will be the name of the corporate entity performing some of the duties under the existing advisory contracts. You contend that this change is not a material amendment to the existing advisory relationship between Wells Fargo and each Fund because Wells Fargo will retain responsibility for, and control over, the provision of advisory services to each Fund in its capacity as the primary adviser to each Fund and as the parent company that wholly owns WCM. Under these circumstances, you contend that requiring each Fund to obtain shareholder approval solely for this new arrangement, or any subsequent changes to it, would impose significant expense on shareholders without serving any useful purpose.

Without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under Section 15(a) of the Investment Company Act if Wells Fargo contracts with WCM, its wholly owned subsidiary, to act as a sub-adviser to each Fund, and subsequently reallocates investment advisory responsibilities and fees between itself and WCM, as described above, without obtaining the approval of each Fund's shareholders. This position is based upon all of the facts and representations in your letter, particularly your representations that: (i) neither WCM's appointment as a sub-adviser, nor any subsequent changes to the sub-advisory arrangement between Wells Fargo and WCM, will result in a reduction in the nature or level of services provided to each Fund, or an increase in the aggregate fees paid by each Fund for such services; and (ii) appropriate notice will be given to existing and prospective

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feeder fund, without obtaining shareholder approval, adopted an advisory contract that was substantially identical to the previously approved contract between the adviser and the former master fund).

[3] INVESCO (pub. avail. Aug. 5, 1997) (staff would not recommend enforcement action under Section 15(a) if fund advisory fees were reallocated between adviser and sub-advisers, without obtaining shareholder approval, when aggregate fees would remain unchanged and neither the adviser nor sub-advisers would reduce the quality or quantity of their services).

shareholders. You should note that any different facts could require a different conclusion.[4]

Eileen M. Smiley
Senior Counsel

March 31, 1998

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[4]Section 15(a)(4) of the Investment Company Act requires that an advisory contract with a registered investment company must provide "for its automatic termination in the event of its assignment." You opine that the Reorganization will not result in an "assignment" of the Funds' advisory contracts within the meaning of Section 15(a)(4) because the Reorganization falls within Rule 2a-6 under the Investment Company Act. Rule 2a-6 provides that "[a] transaction which does not result in a change of actual control or management of the investment adviser" is not an assignment for purposes of Section 15(a)(4). In support of your conclusion, you rely on, among other things, two letters in which the staff stated that it would not recommend enforcement action under Section 15(a)(4) if an adviser reorganized its investment advisory operations into a wholly owned subsidiary based, in part, on counsel's opinion that the reorganization would not constitute an assignment of the advisory contract. See Prudential Insurance Co. of America (pub. avail. Dec. 3, 1984) ("Prudential"), and The Equitable Life Assurance Society of the United States (pub. avail. Jan. 11, 1984) ("Equitable"). In Equitable and Prudential, either the requesting party represented, or the staff noted that its position was based, in part, on the representation, that the Fund would obtain shareholder approval of the arrangement at the next scheduled shareholders' meeting. You have not requested our view, and we express none, regarding whether the Reorganization falls within Rule 2a-6. We do note, however, that if a transaction falls within Rule 2a-6, Section 15(a)(4) does not require shareholder approval either before or after the transaction. Prudential and Equitable are superseded to the extent that they may suggest that Section 15(a)(4) requires subsequent shareholder approval of a transaction falling within Rule 2a-6.

WELLS FARGO

C. DAVID MESSMAN
Vice President and
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March 20, 1998

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Douglas J. Scheidt, Esq.
Chief Counsel
Division of Investment Management
United States Securities and
Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Wells Fargo Bank, N.A.

Dear Mr. Scheidt:

On behalf of Wells Fargo Bank, N.A. ("Wells Fargo"), I am writing to request that the staff of the Division of Investment Management provide assurance that it would not recommend that the Securities and Exchange Commission (the "Commission") take any action if Wells Fargo arranges for its wholly-owned subsidiary, Wells Capital Management Incorporated ("WCM") to act as subadviser to certain mutual funds currently advised by dual employees of Wells Fargo and WCM (the "Mutual Funds") without obtaining shareholder approval of the arrangement with WCM initially, or in the future if Wells Fargo reallocates investment advisory responsibilities and fees between itself and WCM.

Appointing WCM as subadviser to the Mutual Funds will not result in any change in the actual investment management services, administrative functions, supervisory responsibilities, or fee arrangements with respect to the Mutual Funds. Consequently, requiring approval of subadvisory agreements with WCM or subsequent changes thereto would merely result in undue costs and burdens and would not advance the interests of shareholders. As a result, and as discussed in detail below, we believe that the requested no-action relief is appropriate.

I. BACKGROUND

Wells Fargo is a national bank that serves as the investment adviser to the series of Stagecoach Funds, Inc., Overland Express Funds, Inc., Life & Annuity Trust, and Master Investment Trust, each of which is a Mutual Fund as defined above. Wells Fargo recently transferred its institutional investment advisory operations, other than those related to the Mutual Funds, to WCM. In connection with that transfer, Wells Fargo's investment advisory employees became employees of WCM. Portfolio Managers for the Mutual Funds became dual employees of Wells Fargo and WCM so that they could continue to manage the Mutual Funds in their capacity as employees of Wells Fargo.

Wells Fargo would like to complete the consolidation of its investment advisory operations into WCM by appointing WCM as subadviser to the Mutual Funds so that the portfolio managers can manage the Mutual Funds in their capacity as employees of WCM, although certain portfolio managers may remain dual employees of Wells Fargo and WCM. Wells Fargo would continue to provide administrative, supervisory, and other support to WCM and the Mutual Funds, and would remain as the primary investment adviser to the Mutual Funds. Wells Fargo would contract separately with WCM to provide management services to the Mutual Funds. For its services, WCM would be paid by Wells Fargo a portion of the advisory fee paid to Wells Fargo under its contracts with the Mutual Funds, Wells Fargo also would like to retain the ability to reallocate investment advisory and other responsibilities and capabilities between itself and WCM, as well as investment advisory fees, in the future without seeking shareholder approval of those changes.

II. DISCUSSION

Appointing WCM to act as subadviser to the Mutual Funds potentially raises issues under section 15(a) of the Investment Company Act of 1940 (the "Investment Company Act").[1] Section 15(a)(1) of the Investment Company Act requires that an investment adviser

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[1] Wells Fargo has considered the possibility that the proposed appointment of WCM could be deemed to be an assignment of Wells Fargo's investment advisory contracts. Section 15(a)(4) of the Investment Company Act requires that the advisory contract with a registered investment company must provide for its termination in the event of its assignment. It has been well established through no-action relief that a mere change in the form or identity of an entity providing investment advice to a registered investment company is not an assignment for purposes of section 15(a)(4). *See, e.g., Nikko International Capital Management Company*, SEC No-Action Letter (June 1, 1987) (transferring investment advisory arrangements to an affiliated company with the same personnel); *Scudder, Stevens & Clark*, SEC No-Action Letter (Mar. 15, 1985) (permitting an adviser to change from partnership to corporate form). In two prior instances, the

provide services to a registered investment company pursuant to a written contract that has been approved by the majority of the company's shareholders and that precisely describes all compensation to be paid thereunder. That provision ordinarily would require shareholder approval of any advisory arrangement with WCM. Section 15(a)(1) also could be deemed to require shareholder approval of subsequent changes to the allocation of investment advisory responsibilities and fees between Wells Fargo and WCM. No-action relief with respect to both issues is appropriate, however, because appointing WCM as subadviser to the Mutual Funds and thereafter reallocating responsibilities and fees will not involve any substantive change in the investment advisory services received by the Mutual Funds.

Section 15(a)(1) provides shareholders of a registered investment company control over the identity of, and compensation paid to, the investment company's investment adviser. Each of the current shareholders of the Mutual Funds have had the opportunity to approve the Mutual Funds' arrangements with Wells Fargo, either expressly through a shareholder vote, or implicitly in deciding to invest in shares of the Mutual Funds. Because the appointment of WCM as subadviser to the Mutual Funds and subsequent reallocation of responsibilities and fees will not result in any material change in the Mutual Funds' advisory relationships with Wells Fargo, obtaining shareholder approval of the arrangements with WCM would be unnecessary and burdensome.

A recent staff no-action position concerning shareholder approval of arrangements with subadvisers supports that argument. On August 5, 1997, the staff granted no-action relief to the INVESCO family of investment companies to reallocate the advisory

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staff also specifically granted no-action assurances concerning the application of section 15(a)(4) in connection with the establishment of advisory arrangements with subsidiaries. *Prudential Insurance Company of America*, SEC No-Action Letter (Dec. 3, 1984); *The Equitable Life Assurance Society of the United States,* SEC No-Action Letter (Jan. 11, 1984). The staff's no-action positions reflect the policy in rule 2a-6, which provides that "[a] transaction which does not result in a change of actual control or management of the investment adviser" is not considered an assignment for purposes of section 15(a)(4). Applying the rule 2a-6 standard here, no material change in the control or management of the advisory relationship with Wells Fargo will occur by appointing WCM as subadviser. The same personnel who manage the Mutual Funds currently will continue to provide those services. Moreover, control of, and responsibility for, the advisory relationship will remain within Wells Fargo. As a result, Wells Fargo believes that the appointment of WCM will not result in an assignment of Wells Fargo's advisory contracts with the Mutual Funds for purposes of section 15(a)(4). Accordingly, Wells Fargo is not requesting no-action assurances from the staff with regard to the application of section 15(a)(4) in connection with the appointment of WCM.

fees paid to subadvisers without obtaining shareholder approval of those reallocations.[2] The no-action applicant argued that shareholder approval was unnecessary because the reallocation would not result in any change in the amount of fees paid for advisory services or in the nature of the services provided. Similarly, the staff recently granted no-action relief to allow the Franklin Templeton group of funds to amend their advisory agreements without obtaining shareholder approval, based largely on the argument that the transfer of certain adminstrative responsibilities from the funds' investment adviser to an affiliated entity would not result in an increase in the amount of fees or a change in the nature of the services provided to the funds.[3]

Based on the staff's prior no-action positions, the appointment of WCM to act as subadviser to the Mutual Funds should not require shareholder approval. Moreover, subsequent reallocation of advisory responsibilities and fees should not be subject to shareholder approval. In no case will control over the services provided to the Mutual Funds, the nature of the services provided, or the fees charged to the Mutual Funds for those services change by appointing WCM to act as subadviser or by reallocating responsibilities and fees subsequently without obtaining shareholder approval. The Mutual Funds' registration statements will be stickered or otherwise amended to reflect the appointment of WCM concurrent with the provision of subadvisory services to the Mutual Funds by WCM. Similarly, notice of the appointment of WCM to act as subadviser will be provided to existing shareholders in the next regularly scheduled mailing to shareholders following such appointment.[4] To ensure independent oversight of the arrangements with WCM, Wells Fargo intends to comply with the provisions of section 15(a) other than the shareholder approval requirement, including the board approval requirements.

In sum, none of the concerns underlying section 15(a) are implicated by appointing WCM to act as subadviser to the Mutual Funds, and subsequently reallocating responsibilities and fees, without shareholder approval. As a result, Wells Fargo respectfully requests the assurance of the staff that it would not recommend action to the Commission

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2/ *INVESCO*, SEC No-Action Letter (Aug. 5, 1997).

3/ *Franklin Templeton Group of Funds*, SEC No-Action Letter (July 23, 1997).

4/ Although the Mutual Funds will provide notice of the appointment of WCM as subadviser to new and existing shareholders, the Mutual Funds do not intend to provide additional notice whenever there may be a reallocation of advisory fees or responsibilities among WCM and Wells Fargo. Instead, the initial notice will inform new and existing shareholders of the possibility of future reallocations of advisory fees and responsibilities. Of course, as noted above, the aggregate fees and overall responsibilities will not change absent an amendment to the contracts between Wells Fargo and the Mutual Funds.

under section 15(a) if the Mutual Funds do not obtain shareholder approval of the arrangements with Wells Fargo.

Thank you for your consideration of this request. If you have any questions, or would like to meet to discuss the matters set forth in this letter, please contact the undersigned at (415) 222-1140.

Sincerely,

C. David Messman /ga

C. David Messman
Vice President and Senior Counsel