

PUBLIC

27 JUL 1994

RESPONSE OF THE DIVISION
OF INVESTMENT MANAGEMENT

Our Ref. No. 94-277-CC
J.P. Morgan Structured
Obligations Corporation
File No. 132-3

Your letter of April 15, 1994 requests assurance that the Division of Investment Management would not recommend enforcement action to the Securities and Exchange Commission if purchasers of certain series of notes described below ("Notes") treat them as instruments issued or guaranteed by the United States Government or an agency thereof ("Government Securities") for purposes of paragraph (d)(1) of Rule 2a-7 under the Investment Company Act of 1940. Because we believe that the Notes present risks that are significantly different from direct investments in Government Securities, we decline to provide that assurance.

J.P. Morgan Structured Obligations Corporation (the "Company"), a wholly-owned subsidiary of J.P. Morgan & Co. Incorporated, proposes to act as depositor for certain Delaware business trusts (collectively, the "Trusts" and each a "Trust"). Each Trust will be formed by a trust agreement between the Company, as seller, and the owner trustee. Each Trust will issue separate series of asset-backed securities -- Notes and Certificates (collectively, the "Securities"). The Notes of each series will be issued and secured under an indenture to be entered into between the owner trustee on behalf of each Trust and an Indenture Trustee. Distributions on Certificates of a series will be subordinated in priority to payments due on the related Notes. The Notes will be rated "AAA" by at least one nationally recognized statistical rating organization.

The property of each Trust will include obligations issued or guaranteed by the United States of America or an agency thereof (including entities that have obtained or will obtain a no-action letter to the effect that they are agencies of the United States for purposes of Section 2(b) of the Act) ("Obligations"). In addition, each Trust will enter into an interest rate and/or currency exchange agreement ("Swap Agreement") with Morgan Guaranty Trust Company of New York, a New York bank under common control with the Company ("Swap Counterparty"). Under the Swap Agreement, a Trust will exchange certain payments due on the Obligations for payments from the Swap Counterparty. The payments to be made by a Trust under the Swap Agreement generally will be computed in a manner designed to match related payments on the Obligations. Similarly, the amounts to be received by a Trust under the Swap Agreement will be computed in a manner designed to match distributions scheduled to be made on the Securities of the related series of the Trust.

The Indenture Trustee, on behalf of the holders of the Notes, will have a first priority perfected security interest in the Obligations owned by the Trust. Each business day, as specified in a security agreement among the Swap Counterparty,

the Indenture Trustee, and the Trust, the Swap Counterparty will determine the current market value of the Obligations owned by the Trust. (The calculation will be based on the prices at the close of business on the preceding day.) If the Obligations' market value that day does not exceed the outstanding principal balance of the related Securities, plus accrued interest and after taking into account any reasonably expected costs of liquidating the Obligations, the Swap Counterparty will pledge additional collateral consisting of Obligations to the Indenture Trustee ("Additional Collateral") to secure payment of the amounts payable under the Swap Agreement. Upon such pledge, the Indenture Trustee will have a first priority perfected security interest in the Additional Collateral. As calculated by the Swap Counterparty, the Additional Collateral will be in an amount sufficient to assure that the liquidation value of the Obligations and the Additional Collateral (based on the prices at the close of business on the preceding day) is at least 102% of the par amount of the Notes, plus accrued interest.

The Company intends to market certain series of Notes to money market funds. The final maturity of the Notes generally will be between two and five years. The Notes will not have a demand feature. You have asked us to assume that such Notes (i) will be secured solely by the Obligations (and that the related Indenture will provide for the prompt liquidation of the Obligations in the event of a default of the Swap Counterparty, with the proceeds of such liquidation to be used to pay the holders of the Notes their principal amount plus accrued interest), (ii) will bear interest at a variable rate that resets no less frequently than yearly, (iii) will be denominated in United States dollars, (iv) will provide for no caps on the movement of the variable interest rates, and (v) based on a representation of the Company, upon reset of the interest rate, will reasonably be expected to have a market value that approximates their par value. Based on these assumptions and your analysis, you assert that for purposes of Rule 2a-7, it would be appropriate for the maturity of a Note to be measured by reference to the Note's next interest rate reset date.

Rule 2a-7 allows open-end investment companies to use the amortized cost and penny-rounding methods of valuing their portfolio securities if certain conditions regarding portfolio credit quality, diversification, and maturity are met. Paragraph (d) provides that the maturity of a portfolio instrument held by a money market fund shall be deemed to be the period remaining until the date on which the principal amount must be paid. Paragraph (d)(1) provides an exception, stating that "[a]n instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than every 762 days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate."

You recognize that the Notes are not Government Securities. You contend that it nevertheless would be appropriate for the Division to provide assurance that it would not recommend enforcement action against any investment company relying on Rule 2a-7 that treats the Notes as coming within paragraph (d)(1).

You state that the Notes will be collateralized fully, based on daily calculations, so that if the Swap Counterparty defaults on its obligations, the liquidation value of the Obligations and Additional Collateral will be sufficient to pay Noteholders the par amount of the Notes, plus any accrued interest. You also argue that, in the event of the appointment under the Federal Deposit Insurance Act of the Federal Deposit Insurance Corporation ("FDIC") as receiver or conservator of the Swap Counterparty ("Swap Counterparty Insolvency"), the Obligations owned by the Trust would not be property of the Swap Counterparty's receivership or conservatorship estate, and the pledges of Additional Collateral would not be deemed avoidable transfers (and thus would not be required to be returned to the Swap Counterparty's estate in a receivership or conservatorship).

Although the risks presented by a Swap Counterparty Insolvency may be mitigated by the treatment that you anticipate the FDIC would afford the Obligations, we do not believe that, in this context, such treatment makes investment in the Notes the equivalent of an investment in a Government security. Any fund investing in the Notes would be required, under Rule 2a-7, to analyze the credit risks of investing in securities issued by a Trust. Because of the risks presented, this analysis would be significantly different from that required for a Government Security. See Investment Company Act Release No. 18005 (February 20, 1991) at Part II.A. For example, a money market fund would be required to look to the Swap Counterparty or one of its affiliates to make payments due under the Swap Agreement, to determine daily whether Additional Collateral is required, and to provide that Additional Collateral.

You note that the Commission has treated repurchase agreements as involving the acquisition of the underlying securities for purposes of the portfolio diversification requirements of paragraph (c)(4)(i) of Rule 2a-7. You also note that the Division has said that funds may treat an investment in a municipal bond refunded with escrowed Government Securities as a direct investment in the Government Securities for purposes of the diversification requirement of Section 5(b)(1) of the Act. See T. Rowe Price Tax Free Funds (pub. avail. June 24, 1993). You argue that treating the Notes as obligations described in paragraph (d)(1) of Rule 2a-7 would be consistent with these two positions.

We do not agree. The risks presented by the Notes, including the obligation of the Swap Counterparty to post

Additional Collateral, appear to be significantly different from those presented by repurchase agreements and refunded municipal securities.

Repurchase agreements are relatively standardized, widely-accepted instruments that have a long history of use in the short-term capital markets. Moreover, under paragraph (d)(5) of Rule 2a-7, a repurchase agreement is deemed to have a maturity equal to the period remaining until the date on which the repurchase is scheduled, or, for an agreement subject to demand, the notice period for such a demand. Thus, long-term repurchase agreements do not meet the maturity requirements of Rule 2a-7.

When a municipal bond is refunded with Government Securities, at the time of the refunding an independent third party must verify that the scheduled payments on the Government Securities are sufficient to satisfy all scheduled principal and interest payments on the municipal bond. Thus, at the initial deposit investors are assured that, without any further action by the issuer of the municipal bond, all principal and interest payments may be met from the cash flow on the escrowed Government Securities. In contrast, the purchasers of the Notes must look to the obligation of the Swap Counterparty to make scheduled payments under the Swap Agreement and to pledge Additional Collateral.

In conclusion, we believe that the Notes present materially different credit risks than do direct investments in Government Securities. Thus, we decline to assure you that we would not recommend enforcement action if purchasers of the Notes treated them as instruments described in paragraph (d)(1) of Rule 2a-7.



Kenneth J. Berman
Deputy Office Chief

ORRICK, HERRINGTON
& SUTCLIFFE

1940 Act/Rule 2a-7

April 15, 1994

ACT ICA of 1940
SECTION _____
RULE 2a-7
PUBLIC _____
AVAILABILITY 7-27-94

Office of the Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Mail Stop 10-6
Washington, DC 20549

Attention: Matthew A. Chambers
Associate Director

Re: J.P. Morgan Structured Obligations
Corporation -- Investment Company Act
of 1940, Rule 2a-7

Dear Mr. Chambers:

On behalf of our client, J.P. Morgan Securities Inc. ("JPMSI"), we request your concurrence that the staff of the Division of Investment Management (the "Division") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action to the Commission under Rule 2a-7 under the Investment Company Act of 1940, as amended (the "1940 Act"), if the purchasers of certain series of the Notes described below, which series have been tailored for purchase by money market funds, treat such Notes as instruments described in Rule 2a-7(d) (1) under the circumstances described below.

Background

J.P. Morgan Structured Obligations Corporation (the "Company"), a Delaware corporation and an affiliate of JPMSI, proposes to act as depositor for certain trusts created to issue separate series of asset-backed securities rated investment grade which will be registered on Form S-3 under the Securities Act of 1933, as amended (the "1933 Act"). The Company is an indirect wholly-owned subsidiary of J.P. Morgan & Co. Incorporated ("J.P. Morgan").

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General Description of Securities to be Issued.

Notes and certificates of each series (the "Notes" and "Certificates," respectively) will be issued by a Delaware business trust (each, a "Trust") to be formed with respect to each such series. For purposes of this request, you may assume that the property of each Trust will include only securities ("Obligations") that are either (i) issued or guaranteed by the United States of America or an agency thereof, or (ii) issued by the Student Loan Marketing Association ("SLMA"), a Federal Home Loan Bank (a "FHLB"), the Federal Housing Finance Board ("FHFB") as the joint and several obligations of all the FHLBs, the Resolution Funding Corporation ("REFCORP"), the Federal National Mortgage Corporation ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other entity which has obtained or obtains a no-action letter to the effect that it is an agency of the United States for purposes of Section 2(b) of the 1940 Act, Rule 2a-7(d)(1) or both such provisions.^{1/}

^{1/} The Division has previously found that money market funds may treat SLMA and individual FHLBs as agencies of the United States government for purposes of Rule 2a-7(d)(1). See Student Loan Marketing Association (available January 18, 1989); Merrill Lynch, Pierce, Fenner & Smith Incorporated (available November 5, 1984) (money market funds could treat FHLB of San Francisco and other FHLBs as agencies of the United States government for purposes of Rule 2a-7(d)(1)). Because all the FHLBs are jointly and severally liable for consolidated obligations of the FHFB, it necessarily follows from the Merrill Lynch no action letter that such FHFB obligations are agency obligations for purposes of Rule 2a-7(d)(1). The Division has found that REFCORP is an instrumentality or agency of the United States for purposes of the 1940 Act. See Resolution Funding Corporation (available October 20, 1989). Finally, while not specifically using the term "agency," the Division has found that FNMA and FHLMC, like REFCORP, are excluded from the 1940 Act under Section 2(b) thereof as instrumentalities of the United States. Federal National Mortgage Corporation (available May 25, 1988); Federal Home Loan Mortgage Corporation (available July 24, 1971).

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In addition, each Trust will enter into an interest rate and/or currency exchange agreement to be described in the related Prospectus Supplement (the "Swap Agreement") with Morgan Guaranty Trust Company of New York, a New York bank and the principal asset of J.P. Morgan (the "Swap Counterparty"), pursuant to which such Trust will exchange certain payments due on the Obligations for payments from the Swap Counterparty. The payment obligations of the Trust under the Swap Agreement will generally be computed in a manner, and paid on dates, designed to match related payments scheduled to be received on the Obligations. Similarly, the amounts to be received by the Trust under the Swap Agreement and paid by the Trust to investors will be computed in a manner designed to match distributions scheduled to be made on the Notes and Certificates (collectively, the "Securities") of the related series.

The final payment due under the Swap Agreement will be payable on the maturity date of the Securities. The maturity date of the Securities may either be the same as, or earlier than, the maturity date of the Obligations owned by the Trust. In the former case, on the maturity date of the Securities, the principal payment received on the Obligations by the Trust will be used to pay the principal due on the Securities. In the latter case, the Obligations will be liquidated and the proceeds will be used by the Trust to pay principal due on the Securities. If such liquidation proceeds are less than the full amount of principal due on the Securities, under the Swap Agreement the Swap Counterparty will be obligated to pay the Trust an amount equal to the amount of such difference.^{2/} As explained in more detail below, this obligation

^{1/}(...continued)

Other Trusts may be created by the deposit of securities issued by other federal or federal government-sponsored entities so long as such entities have an implied or actual "AAA" credit rating from at least one nationally recognized statistical rating organization. However, the Notes issued by such Trusts would not be covered by the no-action position requested in this letter.

^{2/} If such liquidation proceeds exceed the full amount of principal due on the Securities, under the Swap Agreement the Trust
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of the Swap Counterparty will be collateralized by the posting of Additional Collateral (as defined below). The Trust will then use the liquidation proceeds and the payment received by it from the Swap Counterparty to retire the Securities on their scheduled maturity date.

In addition, the Trust will be obligated to pay to the Swap Counterparty an amount equal to accrued interest on the Obligations owned by the Trust, and the Swap Counterparty will be obligated to pay the Trust an amount equal to accrued interest on the Securities. If the obligations of the Trust and the Swap Counterparty under the Swap Agreement are denominated in the same currency, such obligations will be settled on a net basis in accordance with the customary practice in the swap market. The maturity of the Notes may vary, but is expected to fall most often within the range of two to five years. The Notes will not have any demand features.

The Trusts are intended to be exempt from registration under the 1940 Act by virtue of Rule 3a-7 thereunder, and an opinion of counsel will be obtained to such effect.

The Notes and Certificates may be denominated in United States dollars or in one or more other currencies and may have payments of principal and/or interest determined by an index or formula or may be dual currency Securities. Securities will bear interest at fixed rates or at floating rates determined by reference to one or more base rates, which may be adjusted by a spread, a multiple of a spread-adjusted rate, or a spread adjustment formula, and which may be subject to a maximum interest rate and/or a minimum interest rate. The base rate may be the certificate of deposit rate, the commercial paper rate, the federal funds rate, LIBOR, the prime rate, a Treasury rate or any other specified rate.

The Notes will be issued in minimum denominations of \$250,000 and will be rated "AAA" by at least one nationally

^{2/}(...continued)

will be obligated to pay the Swap Counterparty an amount equal to the amount of such excess.

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recognized statistical rating organization (the "Rating Agency"), based on the security provided by the pledged Obligations and on the "AAA" rating of the Swap Counterparty by the Rating Agency.

Each Trust will be formed pursuant to a Trust Agreement to be entered into between the Company, as seller, and the Owner Trustee specified in the related Prospectus Supplement. The Notes of each series will be issued and secured pursuant to an Indenture to be entered into between the Owner Trustee on behalf of each Trust and the Indenture Trustee specified in the related Prospectus Supplement. Distributions on Certificates of a Series will be subordinated in priority to payments due on the related Notes. The Certificates of each series will represent fractional undivided interests in the related Trust.

The Indenture Trustee, on behalf of the holders of the Notes, will have a first priority perfected security interest in the Obligations owned by the Trust. On each business day, as specified in the related Swap Agreement, the Indenture Trustee or its agent (which may be an affiliate of the Indenture Trustee or the Swap Counterparty) (the "Calculation Agent") will determine the current market value of the Obligations owned by the Trust. If the current market value of such Obligations on such day does not exceed by a positive margin the outstanding principal balance of the related Notes and Certificates, plus accrued interest and after taking into account any reasonably expected costs of liquidating the collateral, on such day the Swap Counterparty will, pursuant to the terms of the Swap Agreement, pledge additional collateral consisting of Obligations to the Indenture Trustee (the "Additional Collateral") to secure payment of the amounts payable by the Swap Counterparty under the Swap Agreement. Upon such pledge, the Indenture Trustee, on behalf of the holders of the Notes and Certificates, will have a first priority perfected security interest in such Additional Collateral. The Additional Collateral so pledged will be in an amount sufficient to assure that the current market value, as determined by the Calculation Agent, of the sum of (a) the Obligations owned by the Trust and pledged as security for the related Notes and (b) the Additional Collateral, exceeds by a positive margin the outstanding principal balance of the Notes and Certificates of such series plus accrued interest thereon, after taking into account any reasonably expected costs of liquidating the collateral. The Additional Collateral will not be

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property of the Trust, and will be owned by the Swap Counterparty, subject to the first priority perfected security interest in the Additional Collateral granted to the Indenture Trustee.

Treatment by Federal Reserve Board for Risk-Based Capital Purposes.

We have confirmed with the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") that Notes issued and secured in the manner described above would be assigned to the zero (0) percent risk weight category, if the Obligations are issued or guaranteed by the United States of America, and to the twenty (20) percent risk weight category, if the Obligations are issued by SLMA, the FHFB, REFCORP, FNMA or FHLMC, under the capital adequacy guidelines for bank holding companies and state member banks. This treatment arises because the Notes are required to be marked to market daily and a positive margin of collateral is required to be maintained. The zero (0) percent risk weight category is applicable to, among other things, debt obligations which are collateralized by securities issued or guaranteed by the United States of America for which a positive margin of collateral is maintained on a daily basis, fully taking into account any change in the market value of the collateral which secures such debt obligation. 12 C.F.R. Part 225, Appendix A, Section III(C)(1). The twenty (20) percent risk weight category is applicable to, among other things, debt obligations which are collateralized by securities issued or guaranteed by the United States government-sponsored agencies (such as SLMA, the FHFB, REFCORP, FNMA and FHLMC). 12 C.F.R. Part 225, Appendix A, Section III(C)(2).

Description of Notes Intended for Money Market Funds.

JPMSI intends to market certain series of Notes to money market funds. For purposes of this letter, you may assume that all Notes intended to be covered by the no-action position requested (i) will be secured solely by Obligations, (ii) will bear interest at a variable rate which resets no less frequently than yearly, (iii) will be denominated in United States dollars, (iv) will provide for no caps, upward or downward, on the movement of the variable interest rate, (v) based on a representation of JPMSI,

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upon reset of the interest rate, will reasonably be expected to have a market value that approximates their par value^{3/}, and (vi) will provide, in the related Indenture, that the Indenture Trustee must promptly liquidate the deposited Obligations and the Additional Collateral pledged to secure the Notes and use the proceeds to pay the holders thereof the par amount of the Notes plus interest accrued to the date of liquidation upon any default by the Swap Counterparty in its obligation to make payments under the Swap Agreement or to post Additional Collateral thereunder. Hereinafter in this letter, the term "Notes" shall be deemed to refer solely to series of Notes intended to be marketed to money

^{3/} We understand the Notes must be reasonably expected to have a market value upon reset of the variable interest rate that approximates their par value as a prerequisite to reliance upon paragraph (d) (1), in light of the staff's position in Morgan Keegan & Company, Inc. (publicly available July 24, 1992). While the language in paragraph (d) (1) does not explicitly provide that the instruments covered by that paragraph must have a market value that approximates their par value upon the readjustment of the interest rate, this requirement is implicit in the rule. Id. at n.7.

This requirement is based upon the purpose of Rule 2a-7, which "is designed to limit the permissible portfolio instruments of a money market fund ... to those instruments that have a low level of volatility and thus will provide greater assurance that the money market fund will continue to be able to maintain a stable price per share that fairly reflects the current net asset value per share of the fund." 1940 Act Release No. 13380 (July 8, 1983), quoted id. at n.7. See also Letters dated June 16, 1993, and June 25, 1993 from Robert E. Plaze, Assistant Director, Division of Investment Management to Investment Company Institute concerning Applicability of Rule 2a-7 to Certain Capped Floating and Variable Rate Instruments.

As described above, the nature of the variable rate on each series of Notes will be such that they can reasonably be expected to have a market value that upon reset of the variable interest rate approximates their par value. JPMSI will make a representation to this effect with respect to each series of Notes intended to be marketed to money market funds.

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market funds which have the characteristics described in clauses (i) - (vi) above.

Analysis

Rule 2a-7 under the 1940 Act governs money market funds. Paragraph (d) thereof provides that the maturity of a portfolio instrument held by a money market fund shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount must be paid, subject to certain exceptions.

One such exception is set forth in paragraph (d) (1) of Rule 2a-7. Paragraph (d) (1) provides that "[a]n instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than every 762 days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate."

If the Notes are deemed to be instruments described in paragraph (d) (1), then they may be purchased by money market funds without violating paragraph (c) (2) (i), which prohibits money market funds from purchasing any instrument with a remaining maturity of greater than 397 calendar days. If the Notes are not deemed to be instruments described in paragraph (d) (1), then, because they do not contain demand features which might make them eligible for purchase under paragraph (d) (3), they may not be purchased at all if their stated final maturity exceeds 397 days.^{4/}

Notwithstanding that the Notes are not Obligations, we believe that because the Notes are fully collateralized by Obligations as described below, it would be appropriate for the staff to agree that it would not take any enforcement action if a

^{4/} If their stated final maturity is 397 days or less, then the Notes would constitute Variable Rate Instruments and be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate under paragraph (d) (2). However, the Company does not propose to cause Notes with an original stated maturity of 397 days or less to be issued in the normal course.

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money market fund acquiring a Note covered by this request treats such Note as an instrument described in Rule 2a-7(d)(1).

Notes fully collateralized. The Notes will be fully collateralized, as calculated daily, during their entire term by Obligations consisting either of Obligations owned by the Trust or of Additional Collateral in a manner such that, upon any default by the Swap Counterparty in its obligation to make payments under the Swap Agreement or to post Additional Collateral, the liquidation value of such Obligations and Additional Collateral on such date will be sufficient to pay the holders thereof the par amount of such Notes plus interest accrued to such date, taking into account any reasonably expected cost of liquidating the collateral.^{5/}

^{5/} The obligation of the Swap Counterparty to pledge Additional Collateral will be set forth in a Security Agreement (the "Security Agreement") among the Swap Counterparty, the Indenture Trustee and the Trust. The Security Agreement will require that the Swap Counterparty pledge Additional Collateral to the Indenture Trustee on each day in an amount which, when added to the Obligations owned by the Trust, will cause the combined liquidation value thereof (based on prices at the close of business on the preceding business day) to be greater than or equal to 102% of the par amount of the Notes, plus accrued interest, on such day. The Swap Counterparty will use daily quotations provided by Interactive Data Services Inc. ("IDSI"), an independent vendor, to determine the liquidation value of the Obligations and Additional Collateral.

The mechanics of this process are as follows. A computer tape containing closing prices for the business day just ended will be delivered by IDSI to the Swap Counterparty after the close of business in New York on a daily basis. The Swap Counterparty will use the computer tape to calculate the value of the Obligations based on the mid-point (the "mid-market") between bid and ask prices. To expedite processing, at the open of business in London, the Swap Counterparty's London branch will determine, in light of the previous day's New York closing prices, whether more Additional Collateral must be pledged, and if so, it will arrange for the Swap Counterparty to deliver the Additional Collateral to the Indenture
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Moreover, upon any such default, under the Indenture the Indenture Trustee will be required to promptly liquidate the pledged Obligations and Additional Collateral and pay off the Notes, without the consent of or consultation with holders or any other delay. The Indenture Trustee has confirmed to us that upon any such default, it would liquidate the securities which make up the Obligations and Additional Collateral on a "next day settlement" basis, so that liquidation proceeds would be received by the Indenture Trustee and sent to holders in accordance with the Indenture on the first business day following the Indenture Trustee obtaining actual knowledge of the default.

Risk of Swap Counterparty insolvency. In the event of the appointment under the Federal Deposit Insurance Act (the "FDIA") of the FDIC as receiver or conservator of the Swap Counterparty (which is not bankruptcy-eligible), the Obligations owned by the Trust would not be property of the Swap Counterparty's receivership or conservatorship estate, and thus the Obligations would be available to make payments to holders of the Notes. In addition, pledges of Additional Collateral by the Swap Counterparty to the Indenture Trustee would not be deemed avoidable transfers in such a receivership or conservatorship of the Swap Counterparty under the FDIA, and under FDIC policy, the Indenture Trustee would be permitted to foreclose on the Additional Collateral in the event of a default by the Swap Counterparty in its obligation to make payments under the Swap Agreement or to post Additional Collateral, notwithstanding such a receivership or conservatorship. In connection with each issuance of Notes, the Company will obtain an opinion of counsel to the foregoing effect.

Thus, it appears that the holding of the Notes by money market funds would not be inconsistent with the public policy

^{5/}(...continued)

Trustee at the open of business in New York.

If more Additional Collateral than necessary has been pledged, upon the request of the Swap Counterparty, the Indenture Trustee will release collateral to the Swap Counterparty sufficient to reduce total coverage to 102% of the par amount of the Notes, plus accrued interest.

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underlying Rule 2a-7, to avoid liquidation of money market funds at a net asset value of less than 100% ("breaking the dollar"). See Morgan Keegan, supra.

Moreover, treating the Notes as obligations described in paragraph (d)(1) would be consistent with the approach the Commission and the staff, respectively, have taken in two other similar contexts under the 1940 Act. In each case, a "look-through" approach was employed to treat ownership of obligations fully secured by Government securities as equivalent to a direct investment in such Government securities.

Repurchase Agreements under Rule 2a-7(c)(4)(i).

The Commission has taken a "look through" approach to repurchase agreements collateralized by Government securities (and certain other high credit quality instruments). Under paragraph (c)(4)(i) of Rule 2a-7, a money market fund may not invest more than 5% of its total assets in securities of a single issuer. Government securities^{6/}, however, are not subject to this limit. A repurchase agreement is deemed to be an acquisition of the underlying securities if the obligation of the seller to repurchase the securities from the money market fund is collateralized fully. The effect of this provision is to treat repurchase agreements secured by Government securities as direct ownership of such securities for purposes of paragraph (c)(4)(i)(A). See Investment Company Act Release No. 18005, [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 84,710, at 81,322-23 (February 20, 1991) (the "Release").

Refunded Municipal Securities.

The staff has also taken a "look through" approach in the context of refunded municipal securities. In T. Rowe Price Tax Free Funds (available June 24, 1993), the Division took the position that funds may treat an investment in a municipal bond refunded with escrowed Government securities as a direct investment

^{6/} The definition of "Government security" is contained in Section 2(a)(16) of the 1940 Act and includes all Obligations, as such term is used in this letter.

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in the Government securities for purposes of the diversification requirements of Section 5(b)(1) of the 1940 Act.^{7/}

Standard for Determining That Notes Are Collateralized Fully.

In our view, the Notes should be deemed to be collateralized fully if the structure of the transaction satisfies requirements equivalent to those required for repurchase agreements. Under paragraph (a)(3), a repurchase agreement is "Collateralized Fully" if

(i) the value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the resale price provided in the agreement; and

(ii) the money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian; and

^{7/} Section 5(b)(1) of the 1940 Act requires, in order for an investment company to be considered a diversified company under the 1940 Act, that at least 75% of the value of its total assets must be represented by cash and cash items, Government securities, securities of other investment companies and other securities for the purposes of the calculation limited in respect of any one issuer to an amount not greater in value than 5% of the value of the total assets of such investment company.

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(iii) the money market fund retains an unqualified right to possess and sell the collateral in the event of a default by the seller; and

(iv) the collateral consists entirely of Government securities or securities that, at the time the repurchase agreement is entered into, are rated in the highest rating category by the Requisite NRSROs.

Here, the Notes have been structured to satisfy requirements which are equivalent to those required for repurchase agreements under Rule 2a-7(c)(4)(i).

First, as stated above, the value of the Obligations collateralizing the Notes will initially be, and in light of the obligation of the Swap Counterparty to post Additional Collateral will remain during the entire term of the Notes, at least equal to the par amount of the Notes plus accrued interest to the date of liquidation, taking into account any transaction costs which the Indenture Trustee reasonably could expect to incur in liquidating the pledged Obligations.

Second, the Indenture Trustee, on behalf of the money market funds owning the Notes, will have a first priority perfected security interest in the Obligations collateralizing the Notes. Because the Obligations are registered on a book entry system, the security interest of the Indenture Trustee will be evidenced by maintaining the book entry in the name of the Indenture Trustee, who will hold such Obligations and Additional Collateral in book-entry form as secured party for the benefit of the holders of the Notes.

Third, the Indenture Trustee will possess the collateral (by book-entry transfer) and will be required under the Indenture to sell the collateral and pay off the Notes in the event of any default by the Swap Counterparty.

Fourth, the collateral will consist entirely of Obligations, which are included in the definition of Government securities.

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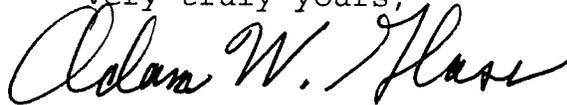
Request

In view of the foregoing, we respectfully request that the Division of Investment Management agree that it will not recommend any enforcement action to the Commission if money market fund purchasers of Notes having the characteristics described in this letter treat such Notes as instruments described in Rule 2a-7(d)(1) for purposes of Rule 2a-7.

In accordance with Securities Act Release No. 6269 (December 5, 1980), seven additional copies of this letter are enclosed.

If the staff is inclined to refuse to take a no-action position, we would appreciate the opportunity to discuss this matter with you further before any adverse written response to this letter. If you have any questions concerning the foregoing or require any additional information or clarification, please feel free to call me at (212) 326-8819 or Cameron Cowan of this firm at (202) 463-3404.

Very truly yours,



Adam W. Glass

AWG:al
Enclosures