

Investment Company Act of 1940 – Section 17(a)(2)
Van Kampen Funds Inc.

January 31, 2007

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 20069281458
Van Kampen Funds Inc.
File No. 132-3

Your letter dated January 31, 2007 requests our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) under section 17(a)(2) of the Investment Company Act of 1940 (the “Investment Company Act”) against a Redeeming Person (as defined below) if, under the circumstances described below and without obtaining an order from the Commission under the Investment Company Act, the Redeeming Person receives from a Trust (as defined below), as redemption proceeds, the underlying assets of the Trust (the “Assets”).

BACKGROUND

You state that Van Kampen Funds Inc. (“Van Kampen”) serves as the sponsor to unit investment trusts that are registered under the Investment Company Act (the “Trusts”). Van Kampen is also the depositor, promoter and principal underwriter for each Trust. The Bank of New York currently serves as the trustee (the “Trustee”) to each Trust. Either the Trustee or a recognized pricing service would act as evaluator with respect to any Trust that would propose to make in-kind redemptions to Van Kampen or any other affiliate of a Trust (together, the “Redeeming Persons”).¹ Each unit of a Trust (a “Unit”) represents a fractional undivided interest in the Assets, and those Assets are held by the Trustee for the benefit of Unit holders (the “Holders”).

You explain that, when a Holder wishes to redeem Units, the Holder may tender the Units to Van Kampen, as the sponsor, which purchases the tendered Units with its own money.² Van Kampen becomes the owner of the Units and may either resell the Units to the public or, acting as principal, tender the Units to the Trust for redemption. In the alternative, the Holder may tender the Units directly to the Trust for redemption. Many of the Trusts offer an in-kind redemption option whereby Holders tendering Units for redemption may request an in-kind redemption of the Assets.

You request guidance concerning a proposal to allow a Trust to effect in-kind redemptions to Redeeming Persons. You state that, upon a request for an in-kind redemption by a Redeeming Person, a Trust would distribute to the Redeeming Person its proportionate share of

¹ See note 4 *infra* and accompanying text (defining “affiliate”).

² You represent that Van Kampen, when purchasing Units from tendering Holders, complies with rule 22c-1 under the Investment Company Act.

every Asset in the Trust's portfolio. In addition, a Trust would distribute cash in lieu of Assets not amounting to round lots (or which would not amount to round lots if included in the in-kind redemption), fractional shares and accruals on such Assets. Further, cash will be paid for that portion of a Trust's Assets represented by cash equivalents and other Assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

If the Trustee is not an affiliate of the Redeeming Person, the Trustee may exclude the following Assets from the in-kind redemption to the extent that the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to the Trust or its Holders: (a) securities that, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) any Assets (such as options contracts) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership (collectively, the "Discretionary Assets").³ If the Trustee determines that it is impracticable to distribute the Discretionary Assets in kind, the Trustee would sell or liquidate those Assets to raise cash to satisfy the redemption. In the event that the Discretionary Assets could not be sold or liquidated, these Assets would remain in the Trust, and the Trustee would sell or liquidate other Assets, as necessary, to raise cash to satisfy the redemption.

You also state that an in-kind redemption would be effected based upon the price per Unit computed by the Trustee as of 4:00 p.m., Eastern time (or earlier close of the New York Stock Exchange) next following the tender of any Units for redemption, or such other time stated in a Trust prospectus for computation of the net asset value. The distributing Trust's Assets (including those that are distributed in-kind) would be valued in the same manner as they are valued for purposes of computing the Trust's net asset value, and the in-kind redemption would be effected at approximately the Redeeming Person's proportionate share of the Trust's current net asset value.

Finally, you suggest that the Holders may prefer in-kind redemptions over cash redemptions. You note that, among other things, the transaction costs that are associated with the sale of Assets to obtain cash to meet a redemption request are borne by all Holders, including those who do not redeem. An in-kind redemption can allow a Trust to honor redemption requests while, among other things, avoiding the adverse effects to non-redeeming Holders

³ It is contemplated that the Discretionary Assets would be included within an in-kind redemption to a Redeeming Person to the extent permissible. For example, if relevant law prohibits the holding of a Discretionary Asset by non-nationals (other than through a qualified investment vehicle), the Trustee would distribute that Asset in an in-kind redemption if the Redeeming Person were a national or a qualified investment vehicle.

caused by cash redemptions. You are concerned, however, that section 17(a)(2) of the Investment Company Act prohibits the in-kind redemptions by a Redeeming Person.

ANALYSIS

Section 17(a)(2) prohibits any affiliated person or promoter of or principal underwriter for a registered investment company (a “first-tier affiliate”), or any affiliated person of such a person, promoter, or principal underwriter (a “second-tier affiliate”), acting as principal, from knowingly purchasing securities or other property from the investment company (except securities of which the seller is the issuer).⁴ Section 17(a) was designed primarily to prohibit “a purchase or sale transaction when a party to the transaction has both the ability and the pecuniary incentive to influence the actions of the investment company.”⁵ An in-kind redemption involving an affiliate of, a promoter⁶ of or a principal underwriter⁷ for a registered investment company, such as a UIT, may be deemed to be a “purchase” of securities or other property from the company by the affiliate, promoter, or principal underwriter that section 17(a)(2) of the Investment Company Act prohibits.⁸

⁴ Section 2(a)(3) of the Investment Company Act defines “affiliated person.” For purposes of this letter, a first- or second-tier affiliate is referred to as an “affiliate.”

⁵ Investment Company Act Release No. 10886 (Oct. 2, 1979), citing Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., at 256-59 (1940).

⁶ Section 2(a)(30) of the Investment Company Act defines “promoter” for a company as a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

⁷ Section 2(a)(29) of the Investment Company Act generally defines “principal underwriter” for any investment company (other than a closed-end company) as, in pertinent part, any underwriter who, as a principal, purchases from the investment company, or pursuant to a contract has the right from time to time to purchase from such company, any security for distribution, or who, as an agent for such company, sells or has the right to sell any such security to a dealer or to the public or both.

⁸ *See, e.g.*, Citigroup Global Markets Inc. (pub. avail. Sept. 26, 2006) (the “Citigroup Letter”) (explaining that the receipt of portfolio securities from a UIT, as redemption proceeds, may constitute a “purchase” under section 17(a)(2)); Signature Financial Group, Inc. (pub. avail. Dec. 28, 1999) (the “Signature Letter”) (explaining that the receipt of portfolio securities from a registered open-end investment management company, as redemption proceeds, may constitute a “purchase” under section 17(a)(2)).

Section 17(a)(2) generally would prohibit any in-kind redemption involving Van Kampen, which is the depositor of, the promoter of and the principal underwriter for each Trust.⁹ You note that we recognized, in the Citigroup Letter, that there are potential benefits to in-kind redemptions. In that letter, the Division recognized that in-kind redemptions involving a UIT sponsor could be effected fairly and without implicating the concerns underlying section 17(a), provided that the trustee, sponsor and UIT comply with certain representations (the “Citigroup representations”).

In your incoming letter, you propose a similar set of representations (as listed below) that deviate from the Citigroup representations in certain instances. For example, the Citigroup Letter includes a representation that, upon an in-kind redemption by the UIT sponsor, the UIT would distribute to the sponsor its proportionate share of *every* security in the trust’s portfolio (the “Citigroup pro-rata representation”). Your pro-rata representation differs from the Citigroup pro-rata representation in that the Trustee may exclude the Discretionary Assets from an in-kind redemption to the extent that the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to the Trust or its Holders (the “Van Kampen pro-rata representation”).

The Citigroup pro-rata representation is based on Commission and staff precedent relating to in-kind redemptions by affiliates of open-end funds.¹⁰ The exemptive orders generally provide that the applicable open-end fund’s assets must be distributed on a pro-rata basis after categorically excluding from the in-kind redemption proceeds particular assets (the “exemptive orders’ pro-rata condition”). The Citigroup pro-rata representation and exemptive orders’ pro-rata condition ensure that an affiliate of a fund does not “cherry-pick” which assets are distributed in the in-kind redemption to the affiliate’s benefit and to the remaining unitholders’ detriment.

You contend that the Van Kampen pro-rata representation does not permit cherry-picking despite the Trustee’s ability to exclude the Discretionary Assets.¹¹ In support of your argument, you represent that neither the Redeeming Person, nor any other party with the ability and the pecuniary incentive to influence the in-kind redemption, selects, or influences the selection of,

⁹ The sponsor of a UIT would be an affiliated person of the UIT if it were to act as the UIT’s depositor. *See* section 2(a)(3)(F) of the Investment Company Act (defining the depositor of an unincorporated investment company not having a board of directors as an “affiliated person” of the company).

¹⁰ *See, e.g.*, SR&F Base Trust, Investment Company Act Release Nos. 23297 (July 1, 1998) (notice) and 23364 (July 28, 1998) (order) (condition 2); Emerald Funds, Investment Company Act Release Nos. 22861 (Oct. 20, 1997) (notice) and 22892 (Nov. 17, 1997) (order) (condition 2) (collectively, the “exemptive orders”). *See also generally* the Signature Letter at note 19.

¹¹ The exemptive orders’ pro-rata condition does not permit cherry-picking because it provides no discretion in the selection of assets to be distributed in the in-kind redemption.

the distributed Assets.¹² In addition, you contend that, when the Trustee withholds certain Discretionary Assets from an in-kind redemption, any Assets (other than cash) that are distributed must be distributed pro rata. That is, the Trust will not distribute an additional Asset in lieu of a withheld Discretionary Asset; rather, the Trust will distribute an amount of cash that is equal in value to the withheld Discretionary Asset.

The representations in your letter also contemplate in-kind redemptions by a broader group of affiliates than that contemplated in the Citigroup Letter, which only addressed in-kind redemptions by a UIT's sponsor.¹³ You contend that your proposed representations eliminate the concerns that section 17(a)(2) was designed to address because no Redeeming Person would have the ability, and the Trustee would not have the pecuniary incentive, to cause a Trust to distribute any particular Asset to benefit the Redeeming Person.

We believe that your proposed representations and their deviations from the Citigroup representations do not pose significant concerns. We would not recommend enforcement action to the Commission under section 17(a)(2) of the Investment Company Act against a Redeeming Person if, under the circumstances described in this letter and without obtaining an order from the Commission under the Investment Company Act, the Redeeming Person receives from a Trust, as redemption proceeds, Assets, provided that:

1. The in-kind redemption is effected at approximately the Redeeming Person's proportionate share of the distributing Trust's current net asset value, and thus does not result in the dilution of the interests of the remaining Holders of the Trust;¹⁴
2. The distributing Trust's Assets (including those that are distributed in-kind) are valued in the same manner as they are valued for purposes of computing the Trust's net asset value;¹⁵

¹² You represent that if the Redeeming Person is an affiliate of the Trustee, the applicable Trust would distribute to the Redeeming Person its proportionate share of *every* Asset in the Trust's portfolio. The Trustee could, in the alternative, effect a cash redemption for the entire redemption amount.

¹³ Your proposed representations also contemplate the distribution of cash in lieu of, among other things, fractional shares and odd lots, unlike the Citigroup representations. You contend that distributing fractional shares and odd lots in an in-kind redemption would be, among other things, unduly burdensome or impracticable, if not impossible.

¹⁴ See section 2(a)(32) of the Investment Company Act.

¹⁵ See rule 22c-1 under the Investment Company Act (generally requiring redemptions to occur at the net asset value next determined after the redemption order is received); rule 2a-4 under the Investment Company Act (generally requiring the current net asset value for purposes of redemption to be computed according to specified requirements, including the use of current market values for all portfolio securities for which market quotations are readily available).

3. The in-kind redemption is consistent with the distributing Trust's redemption policies and undertakings, as set forth in the Trust's prospectus;

4. Neither the Redeeming Person, nor any other party with the ability and the pecuniary incentive to influence the in-kind redemption, selects, or influences the selection of, the distributed Assets;

5. Upon an in-kind redemption by the Redeeming Person, the Trust distributes to the Redeeming Person its proportionate share of every Asset in the Trust's portfolio. If the Trustee is not an affiliate of the Redeeming Person, the Trustee may exclude the Discretionary Assets from the in-kind redemption to the extent that the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to the Trust or its Holders. If the Trustee determines that it is impracticable to distribute the Discretionary Assets in kind, the Trustee would sell or liquidate those Assets to raise cash to satisfy the redemption;¹⁶

6. The in-kind redemption does not favor the Redeeming Person to the detriment of any other Holder;¹⁷

7. The Trustee to each Trust monitors each in-kind redemption on a quarterly basis for compliance with (1) through (6) above;¹⁸ and

8. The distributing Trust maintains and preserves for a period of not less than six years from the end of the fiscal year in which the in-kind redemption occurs, the first two years in an easily accessible place, records for each in-kind redemption setting forth the identity of the Redeeming Person, a description of the composition of the Trust's portfolio (including each asset's value) immediately prior to the distribution, a description of each security distributed in-kind, the terms of the in-kind redemption, the information or materials upon which the asset valuations were made, and a description of the composition of the Trust's investment portfolio (including each asset's value) one month after the in-kind redemption.

¹⁶ See third and fourth paragraphs of the "BACKGROUND" section of this letter *supra* for further explanation of the mechanics of an in-kind redemption.

¹⁷ We believe that, under certain circumstances, a change in the valuation of an Asset immediately prior to its distribution to the Redeeming Person may indicate favorable treatment to that Person to the detriment of the other Holders.

¹⁸ You represent, as explained earlier, that the Trustee is subject to fiduciary duties of care and loyalty under state statutory and common law. You also represent that the Trustee will maintain and preserve, for the benefit of the Trusts, records reflecting the Trustee's quarterly monitoring of the in-kind redemptions, and that these records will be maintained and preserved for the time and in a manner prescribed by representation 8 herein.

Because our position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion.

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Investment Company Act of 1940 §17(a)

Douglas J. Scheidt
Associate Director and Chief Counsel
Division of Investment Management
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: In-kind Redemptions to Affiliated Persons of a Unit Investment
Trust under Section 17(a) of the Investment Company Act

Dear Mr. Scheidt:

On behalf of Van Kampen Funds Inc. ("*Van Kampen*"), we respectfully request that the staff of the Division of Investment Management of the Securities and Exchange Commission (the "*Commission*") advise us that it will not recommend that the Commission take any enforcement action under Section 17(a)(2) of the Investment Company Act of 1940, as amended, (the "*Act*") against a Redeeming Person (as defined below) if, under the circumstances described below and without obtaining an order from the Commission under the Act, the Redeeming Person receives from a Trust (as defined below), as redemption proceeds, the underlying assets of the Trust (the "*Assets*").

PROPOSAL

Van Kampen serves as the sponsor to unit investment trusts that are registered under the Act (the "*Trusts*"). Van Kampen is the depositor, promoter and principal underwriter for each Trust. The Bank of New York currently serves as the trustee (the "*Trustee*") to each Trust. Either the Trustee or a recognized pricing service would act as evaluator (the "*Evaluator*") with respect to any Trust that would propose to make in-kind redemptions to Van Kampen or any other Affiliate (as defined below) of a Trust (together, the "*Redeeming Persons*"). Each unit of a Trust (a "*Unit*") represents a fractional undivided interest in Assets, and those Assets are held by the Trustee for the benefit of Unit holders (the "*Holder*").

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Many of the Trusts currently offer an in-kind redemption option whereby Holders tendering Units for redemption may request a pro rata in-kind distribution of Assets equal to the related redemption price per unit, subject to certain conditions such as minimum Unit requirements. Trusts generally do not offer in-kind distributions of Assets where delivery of such Assets would be impossible or impracticable, such as securities that are held in foreign markets. Amounts representing Assets that cannot be distributed in-kind, fractional shares or fractions of round lots are generally distributed in cash.

When a Holder wishes to redeem Units, the Holder may tender the Units to Van Kampen, as the sponsor, which purchases the tendered Units with its own money.¹ Van Kampen becomes the owner of the Units and may either resell the Units to the public or, acting as principal, tender the Units to the Trust for redemption. In the alternative, the Holder may tender the Units directly to the Trust for redemption.

Van Kampen respectfully requests guidance concerning a proposal to allow Trusts to effect in-kind redemptions to Redeeming Persons as follows. Upon a request for an in-kind redemption by a Redeeming Person, a Trust would distribute to the Redeeming Person its proportionate share of every Asset in the Trust's portfolio. In addition, a Trust would distribute cash in lieu of Assets not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such Assets. Distributing fractional shares, odd lots or accruals on such Assets in an in-kind redemption would be, among other things, unduly burdensome or impracticable, if not impossible. Cash will be paid for that portion of a Trust's Assets represented by cash equivalents and other Assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

If the Trustee is not an Affiliate of the Redeeming Person, the Trustee may exclude the following Assets from the in-kind redemption to the extent the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to the Trust or its Holders: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) any Assets (such as options contracts) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership (collectively, the "*Discretionary Assets*"). It is contemplated that Discretionary Assets would be included within an in-kind distribution to a Redeeming Person to the extent permissible. For example, if relevant law prohibits the holding

¹ Van Kampen, when purchasing Units from tendering Holders, complies with Rule 22c-1 under the Act.

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of a Discretionary Asset by non-nationals (other than through a qualified investment vehicle), the Trustee would distribute that Asset in an in-kind redemption if the Redeeming Person were a national or a qualified investment vehicle. If the Trustee determines that it is impracticable to distribute the Discretionary Assets in kind, the Trustee would sell or liquidate those Assets to raise cash to satisfy the redemption. In the event that the Discretionary Assets could not be sold or liquidated, these Assets would remain in the Trust, and the Trustee would sell or liquidate other Assets, as necessary, to raise cash to satisfy the redemption. It is our understanding that this occurrence is relatively rare and we note that this possibility currently exists with all unit investment trust (“UIT”) redemptions and does not depend on the redemption being satisfied through an in-kind distribution or on a redeeming unitholder being an affiliated person of the UIT. This issue is generally addressed through prospectus disclosure for UITs that currently offer in-kind distributions. We also note that, due to the relative lack of discretionary management power of UITs, UIT sponsors generally seek to avoid structuring UITs to invest in securities that are illiquid or difficult to value. Finally, an in-kind redemption would be effected based upon the price per Unit computed as of 4:00 p.m. Eastern time (or earlier close of the New York Stock Exchange) next following the tender of any Units for redemption, or such other time stated in a Trust prospectus for computation of net asset value.

APPLICABLE STATUTORY PROVISIONS AND REGULATORY POLICY

Section 17(a) of the Act, with certain exceptions, prohibits an affiliated person or promoter of or a principal underwriter for a registered investment company (a “*First-Tier Affiliate*”), or any affiliated person of such a person, promoter, or principal underwriter (a “*Second-Tier Affiliate*”), from engaging knowingly in a purchase or sale of securities or other property in a transaction with that investment company.² First-Tier Affiliates and Second-Tier Affiliates are referred to herein as “*Affiliates*”. Section 2(a)(3) defines “affiliated person” to include the “depositor” of an investment company if the company is an unincorporated investment company not having a board of directors, as well as persons with other specified relationships to the company.³ A “sponsor” of a UIT would generally be an affiliated person of

² Section 17(a) provides, in pertinent part:

“It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3)(A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal-- (1) knowingly to sell securities or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer.... (2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer)....”

³ Section 2(a)(3) provides:

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the UIT because it would generally be considered a depositor of the UIT and might also fall within other affiliated person categories. Section 2(a)(30) of the Act defines “promoter” of a company or a proposed company as “a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.” Section 2(a)(29) of the Act defines “principal underwriter” for a UIT to include any underwriter who as principal purchases from the UIT units of the UIT for distribution, or who as agent for the UIT sells units of the UIT to a dealer or to the public or both.⁴ A UIT’s “sponsor” would also generally be a promoter of and principal underwriter for the UIT. To the extent that an in-kind redemption would be considered to involve the “purchase” of portfolio securities or other property by a unitholder that is an Affiliate of a UIT, an in-kind redemption would be prohibited by Section 17(a)(2).⁵ If Redeeming Persons were permitted to receive in-kind redemptions, a Trust could realize substantial benefits.

Redemption in-kind can bring substantial benefits to non-redeeming Holders and does not impose the same burdens that may fall on a Trust when it has to satisfy redemption requests in cash. If a Holder seeks to redeem a substantial holding, the need to generate cash to fund the redemption proceeds may require the prompt sale of large amounts of securities and may disrupt administration of the Trust portfolio. It may be easier, or necessary in certain situations, for a Trust to sell the most liquid securities in its portfolio even though Van Kampen and Trustee might otherwise wish to retain those securities in the Trust as long-term investments or to liquidate securities on a pro rata basis in an effort to maintain the existing proportionate

“‘Affiliated person’ of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person, (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof, and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.”

⁴ Section 2(a)(29) provides, in pertinent part:

“‘Principal underwriter’ of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company.”

⁵ The staff of the Commission has previously declined to confirm that an in-kind distribution is not a “purchase” for purposes of Section 17(a) of the Act. See *Signature Financial Group, Inc.* (pub. avail. Dec. 28, 1999) (the “*Signature Letter*”). See also *Citigroup Global Markets Inc.* (pub. avail. Sept. 26, 2006) (the “*Citigroup Letter*”).

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relationship among securities in the Trust's portfolio. Such a sale could leave a Trust with a less liquid and more volatile portfolio, which may increase the difficulty of ongoing administration and of meeting future redemption requests. In addition, the rapid sale of a large block of securities to generate cash to satisfy redemption proceeds may cause the Trust to receive lower prices than it might have obtained in a more orderly disposition, adversely affecting non-redeeming unitholders. Brokerage expenses and transaction costs associated with the sale of Assets to obtain cash to meet a redemption request are also borne by all Holders, including those that do not redeem. Redemption in-kind, on the other hand, can allow a Trust to honor redemption requests while avoiding the adverse effects to non-redeeming Holders and the disruptions of portfolio administration that may be caused by cash redemptions. Redemption in-kind may also have significant tax advantages to non-redeeming unitholders because pro rata in-kind distributions of securities generally do not generate capital gain transactions that affect non-redeeming unitholders. In light of such benefits, the staff of the Commission has recognized that it may be desirable for an investment company to have the ability to redeem in-kind.⁶

REPRESENTATIONS

We respectfully request that the staff of the Commission agree not to recommend enforcement action to the Commission under Section 17(a)(2) of the Act against a Redeeming Person if, under the circumstances described in this letter and without obtaining an order from the Commission under the Act, the Redeeming Person receives from a Trust, as redemption proceeds, Assets, provided that:

1. The in-kind redemption is effected at approximately the Redeeming Person's proportionate share of the distributing Trust's current net asset value, and thus does not result in the dilution of the interests of the remaining Holders of the Trust;
2. The distributing Trust's Assets (including those that are distributed in-kind) are valued in the same manner as they are valued for purposes of computing the Trust's net asset value;
3. The in-kind redemption is consistent with the distributing Trust's redemption policies and undertakings, as set forth in the Trust's prospectus;
4. Neither the Redeeming Person, nor any other party with the ability and the pecuniary incentive to influence the in-kind redemption, selects, or influences the selection of, the distributed Assets;

⁶ See the Citigroup Letter and the Signature Letter.

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5. Upon an in-kind redemption by the Redeeming Person, the Trust distributes to the Redeeming Person its proportionate share of every Asset in the Trust's portfolio. If the Trustee is not an Affiliate of the Redeeming Person, the Trustee may exclude Discretionary Assets from the in-kind redemption to the extent the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to the Trust or its Holders. If the Trustee determines that it is impracticable to distribute Discretionary Assets in kind, the Trustee would sell or liquidate those Assets to raise cash to satisfy the redemption;⁷
6. The in-kind redemption does not favor the Redeeming Person to the detriment of any other Holder;
7. The Trustee to each Trust monitors each in-kind redemption on a quarterly basis for compliance with (1) through (6) above;⁸ and
8. The distributing Trust maintains and preserves for a period of not less than six years from the end of the fiscal year in which the in-kind redemption occurs, the first two years in an easily accessible place, records for each in-kind redemption setting forth the identity of the Redeeming Person, a description of the composition of the Trust's portfolio (including each asset's value) immediately prior to the distribution, a description of each security distributed in-kind, the terms of the in-kind redemption, the information or materials upon which the asset valuations were made, and a description of the composition of the Trust's investment portfolio (including each asset's value) one month after the in-kind redemption.

PRECEDENT AND ANALYSIS

In the Citigroup Letter, the Division of Investment Management permitted the sponsor of a UIT to receive securities deposited in the portfolio of such UIT as redemption proceeds. In that letter, the staff of the Commission recognized that there are potential benefits to in-kind redemptions. The staff of the Commission recognized in the Citigroup Letter that in-kind redemptions involving a UIT sponsor could be effected fairly and without implicating the

⁷ See the fourth and fifth paragraphs under "Proposal" for further explanation of the mechanics of an in-kind redemption.

⁸ As the trustee of each of the Trusts, the Trustee is subject to fiduciary duties of care and loyalty under state statutory and common law. The Trustee will maintain and preserve, for the benefit of the Trusts, records reflecting the Trustee's quarterly monitoring of the in-kind redemptions, and that these records will be maintained and preserved for the time and in a manner prescribed by representation 8 herein.

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concerns underlying Section 17(a), provided that the trustee, sponsor and UIT comply with certain representations (the "*Citigroup representations*").

Our proposed representations set forth above differ from the Citigroup representations in certain respects. For example, the Citigroup Letter includes a representation that, upon an in-kind redemption by the UIT sponsor, the UIT would distribute to the sponsor its proportionate share of *every* security in the trust's portfolio (the "*Citigroup pro rata representation*"). We believe that this condition would frequently be unduly burdensome or impracticable, if not impossible. Contrary to the Citigroup pro rata representation, we propose that the Trustee may exclude Discretionary Assets from an in-kind redemption to the extent that the Trustee cannot practicably distribute such Assets without undue burden or adverse impact to a Trust or its Holders.

The Citigroup pro rata representation is based on Commission and staff precedent relating to in-kind redemptions by affiliates of open-end funds. The Division of Investment Management, pursuant to delegated authority from the Commission, has issued many exemptive orders permitting redemptions in-kind to affiliated shareholders of open-end management investment companies, subject to a particular condition substantially similar to our pro rata representation (the "*Pro Rata Orders*").⁹ This condition generally provides that the applicable open-end fund's assets must be distributed on a pro rata basis after categorically excluding particular assets from the in-kind redemption proceeds. The Citigroup pro rata representation and the Pro Rata Orders condition ensure that an affiliate of a fund does not "cherry-pick" which assets are distributed in the in-kind redemption to the affiliate's benefit and to the remaining unitholder's detriment.

We believe that our representations do not permit cherry-picking despite the Trustee's ability to exclude Discretionary Assets. In particular, our representations provide that neither a Redeeming Person, nor any other party with the ability and the pecuniary incentive to influence the in-kind redemption, selects, or influences the selection of, the distributed Assets, provided that if the Redeeming Person is an affiliate of the Trustee, the related Trust will distribute to the Redeeming Person its proportionate share of every Asset in the Trust's portfolio. In addition, when the Trustee withholds certain Discretionary Assets from an in-kind redemption, any Assets (other than cash) that are distributed must be distributed pro rata. That is, the Trust will not distribute an additional Asset in lieu of a withheld Discretionary Asset; rather, the Trust will distribute an amount of cash that is equal in value to the withheld Discretionary Asset.

⁹ See, e.g., SR&F Base Trust, Investment Company Act Release Nos. 23297 (July 1, 1998) (notice) and 23364 (July 28, 1998) (order) and Emerald Funds, Investment Company Act Release Nos. 22861 (Oct. 20, 1997) (notice) and 22892 (Nov. 17, 1997) (order). See also generally Signature Letter at note 19.

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Our representations also differ from the Citigroup representations in that they contemplate in-kind redemptions to a broader group of Affiliates than that contemplated in the Citigroup Letter, which only addressed in-kind redemptions by a UIT's sponsor. Our representations also contemplate the distribution of cash in lieu of Assets not amounting to round lots (or which would not amount to round lots if included in the in-kind redemption), fractional shares and accruals on such Assets, unlike the Citigroup representations. As we describe above, distributing these Assets in an in-kind redemption would be, among other things, unduly burdensome or impracticable, if not impossible. We believe that our representations eliminate the concerns that Section 17(a)(2) was designed to address because no Redeeming Person would have the ability, and the Trustee would not have the pecuniary incentive, to cause a Trust to distribute any particular Asset to benefit the Redeeming Person.

CONCLUSION

Based upon the facts and representations discussed herein, we respectfully request assurance that the staff will not recommend that the Commission take enforcement action if a Trust satisfies redemption requests of Redeeming Persons through in-kind distributions of Trust Assets under the circumstances described in this letter.

Should you have any questions regarding this request, please contact the undersigned at (312) 845-3834 or Mark J. Kneedy at (312) 845-3787.

Very truly yours,

CHAPMAN AND CUTLER LLP

By 
Scott R. Anderson