

FEB 19 1993

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

Re: Celina Financial Corporation (the "Company")  
Incoming letters dated October 30, 1992,  
January 8, and 28, 1993

Based on the facts presented, the Division will not recommend enforcement action to the Commission if the Rights to be distributed under the Trust, as described in your letters, are not registered under the Securities Act of 1933. In arriving at this position, we note that: (1) the Rights will be granted pro-rata to shareholders as an integral part of the consideration for the proposed tender offer/merger; (2) the Rights will not be transferable except by operation of law or by will with no form or certificate used to represent the Rights; (3) the Rights will not have a voting or a dividend privilege and will not bear interest; (4) the Rights will not represent an ownership interest in the Company, Republic Mutual Insurance Company, The Celina Mutual Insurance Company, The National Mutual Insurance Company or Celina Acquisition Company; (5) any amount ultimately paid pursuant to the Rights will not depend upon the operating results of the Company, Republic Mutual Insurance Company, The Celina Mutual Insurance Company, The National Mutual Insurance Company or Celina Acquisition Company; (6) the Trust will have a limited purpose of orderly completion of liquidation; (7) the Trust will terminate upon the earlier of the resolution of the claims held by it or its third anniversary (provided, that if the Trust is extended beyond such three-year period, then the Trust will request additional no-action assurance from the staff prior to any extension); (8) the Trust will provide an annual financial accounting and certain other information to its beneficiaries. We also note your oral representation that the Trust will provide interim reports to beneficiaries upon the occurrence of any material events affecting the Trust or the Trust's claims.

The Division of Market Regulation has asked that we inform you that it concurs in the position expressed above with regard to registration of the Rights under the Securities Exchange Act of 1934.

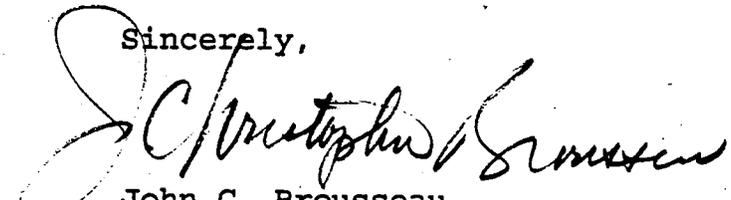
The Division of Investment Management has asked us to inform you that, on the basis of the facts and representations in your letters, it would not recommend enforcement action to the Commission under Section 7(b) of the Investment Company Act of 1940 (the "1940 Act") if Celina creates a trust (the "Trust"), the purpose of which will be to permit the shareholders of Celina to participate in any recovery under certain legal claims (the "Celina Claims"), without registering the Trust under the 1940

Act in reliance on the exception from registration in Section 7(b) for "transactions which are merely incidental to the dissolution of an investment company."<sup>1/</sup>

Our position is based in particular on the following representations: (a) the Trust will not engage in any ongoing trade or business; (b) the interests of the beneficiaries of the Trust will not be transferable except by will, intestate succession or otherwise by operation of law, and there will be no certificates of beneficial interest issued to beneficiaries; and (c) the Trust will terminate at the earlier of the date that the last distribution of funds resulting from the Celina Claims is made by the trustees to the beneficiaries of the Trust or three years from the date of formation of the Trust. This no-action relief is further contingent upon your agreement that the existence of the Trust will not be extended beyond three years from the date of its creation without first obtaining additional no-action assurance from the staff.

Because these positions are based on the representations made in your letters, it should be noted that any different facts or conditions might require a different conclusion. Further, this response only expresses the Divisions' positions on enforcement action and does not purport to express any legal conclusion on the questions presented.

Sincerely,



John C. Brousseau  
Special Counsel

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<sup>1/</sup> On December 29, 1992, Gerald Greenberg, counsel to Celina Financial Corporation, stated in a telephone conversation with Eli Nathans of the Division of Investment Management that the Trust would rely on the exception from registration in Section 7(b).

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October 30, 1992

## FEDERAL EXPRESS

Securities and Exchange Commission  
Division of Corporation Finance  
Division of Investment Management  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: Celina Financial Corporation

Ladies and Gentlemen:

This letter is submitted on behalf of our client, Celina Financial Corporation, an Ohio corporation ("Celina"). We hereby request that the Division of Corporation Finance confirm that it will not recommend any enforcement action to the Commission if, in the circumstances described below, rights ("Rights") to receive cash from an irrevocable trust (the "Trust") are not registered under the Securities Act of 1933 (the "1933 Act") and, following the tender offer and merger described below, Celina ceases periodic reporting under the Securities Exchange Act of 1934 (the "1934 Act"). We also request that the Division of Investment Management confirm that it will not recommend any enforcement action to the Commission if the Trust does not register as an investment company under the Investment Company Act of 1940 (the "1940 Act"). These requests are made on the basis of our view that such rights are not "securities" under any of the 1933 Act, the 1934 Act and the 1940 Act, that establishing the Trust and distributing cash to the holders of Rights upon the termination of the Trust do not constitute "sales" within the meaning of such term as used in the 1933 Act and that the maintenance of the Trust constitutes a transaction incidental to the dissolution of an investment company as that phrase is used in Section 7 of the 1940 Act.

WASHINGTON, D.C. OFFICE  
COLUMBUS, OHIO OFFICE  
NORTHERN KENTUCKY OFFICE  
NOT ADMITTED IN OHIO

REC'D S.E.C.  
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Section 7(b)

RECEIVED  
NOV 10 1992  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Rule:  
Public  
Availability 2/19/93

The Class A Common Shares of Celina are publicly traded and registered pursuant to the Securities Exchange Act of 1934 (the "1934 Act"). Republic Mutual Insurance Company, an Ohio mutual insurance company ("Republic Mutual"), The National Mutual Insurance Company, an Ohio mutual insurance company ("National Mutual"), and The Celina Mutual Insurance Company, an Ohio mutual insurance company ("Celina Mutual" and, together with Republic Mutual and National Mutual, the "Mutual Companies"), currently own approximately 3%, 16% and 31%, respectively, of the Class A Common Shares of Celina, and Celina Mutual and National Mutual own all 100,000 outstanding Class B Common Shares of Celina. Class B shareholders are entitled to exercise 40% of the entire voting power of Celina. Four of the seven directors of Celina have been elected by the holders of the Class A Common Shares and three have been elected by the holders of the Class B Common Shares. Celina and the Mutual Companies are under common management.

It is contemplated that National Mutual will make a cash tender offer for any and all of the Class A common shares of Celina at a price still to be determined. Republic Mutual and Celina Mutual do not intend to tender their shares. The tender offer will be conditioned, inter alia, on the tender of at least 50% of the Class A Common Shares not held by the Mutual Companies. The tender offer will be made in compliance with the requirements of Rules 13e-3 and 14d-1 under the 1934 Act.

It is further contemplated that, immediately after the consummation of the tender offer, Celina, the Mutual Companies and Celina Acquisition Company, an Ohio corporation to be wholly owned by the Mutual Companies and organized for that purpose ("CAC"), will enter into an Agreement and Plan of Merger, pursuant to which CAC will merge into Celina and the surviving corporation will be wholly-owned by the Mutual Companies.

As a result of the merger the Mutual Companies will own all of the outstanding stock of the surviving corporation and each holder of Class A Common Shares of Celina (other than the Mutual Companies), will be entitled to receive for each share owned at the time of the merger an amount in cash equal to the price per share to be paid in the tender offer. It is expected that certain employees of Celina who hold unexercised options to purchase Class A Common Shares will enter into agreements with Celina providing that upon such merger all of such options shall be cancelled in exchange for (a) a cash payment equal to the difference between the exercise price of the options and the merger price and (b) the Rights which the holders of such options would have been entitled to receive if they had exercised such options prior to the consummation of the tender offer.

It is also contemplated that, if the conditions to the tender offer are met, immediately preceding the consummation of the tender offer, Celina will distribute Rights to its shareholders pro rata (including the Mutual Companies and treating the Class A Common and Class B Common Shares equally and assuming that all outstanding options to purchase Class A Common Shares had been exercised as of such time (such shareholders and the option holders described above being referred to herein as the "Pre-Tender Offer Shareholders")) as rights to participate in the Celina Claims (defined below) through the Trust as discussed below.

To implement such distribution, Celina will assign all rights which it may have with respect to certain claims (the "Celina Claims"), together with cash to finance legal fees and expenses, to the Trust described below. The Celina Claims consist of claims Celina may have against third parties in connection with the failure of Mission Insurance Company and its affiliate Pacific Reinsurance Management Corporation. The value of the Celina Claims and the amount which may be recovered in connection therewith are difficult to estimate with a reasonable degree of certainty at this time. To attempt to put a value on the Celina Claims at the present time would require conjecture and, therefore, may be unfair to the Pre-Tender Offer Shareholders of Celina. See Slater Development Corp. (May 9, 1988)

Celina will enter into a trust agreement (the "Trust Agreement") with three individuals who are currently directors or officers of Celina (the "Trustees"). The form of the Trust Agreement is attached to this letter for your reference. Under the terms of the Trust Agreement, Celina will assign to the Trustees its rights in the Celina Claims and deposit with the Trustees cash to pay legal fees and expenses to be incurred in prosecuting the Celina Claims. The Trustees will pursue the Celina Claims in such manner as they deem to be in the best interests of the Pre-Tender Offer Shareholders, maintain the Trust and will invest any cash in the Trust in government securities having maturities of less than five years. Interest earned by the Trust (net of applicable income tax) will become part of the Trust. The purpose of the Trust is to provide the public Pre-Tender Offer Shareholders of Celina with a means to participate in any recovery under the Celina Claims. Any amount paid to the Trustees with respect to the Celina Claims as a result of a final unappealable judgment or a settlement, net of any legal fees and expenses and together with any other cash held by the Trustees under the Trust Agreement, will be distributed to all of the Pre-Tender Offer Shareholders of Celina (including the Mutual Companies) on a pro rata basis. Any recovery by the Trustees will be held in trust for the Pre-Tender Offer

Shareholders of Celina and will not be subject to the claims of Celina's creditors.

The Rights of the Pre-Tender Offer Shareholders to receive cash from the Trust will be represented by the Trust Agreement and the resolutions of the Board of Directors of Celina approving the distribution of the Rights and the creation of the Trust; they will not be assignable or transferable except by operation of law or by intestacy and will not be evidenced by any certificate or other instrument. The Rights will not pay any dividends or bear any stated rate of interest and will have no voting rights. The Rights will represent only the contingent right to receive additional cash consideration under certain defined circumstances.

#### Discussion

##### 1933 Act.

A. The Rights are not "Securities" Under the 1933 Act.

The definition of the term "security" under the 1933 Act, as set forth in Section 2(1) of the 1933 Act, provides that "unless the context otherwise requires," a security is:

[A]ny note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Congress has stated that the 1933 Act defines "the term security in sufficiently broad and general terms so as to include within that definition the many types of instruments that in our commercial world fall within the ordinary concept of a security." H.R. Rep. No. 85, 73d Cong., 1st Sess. 11 (1933). The Congressional debates demonstrate that the legislators assumed that the ordinary concept of a security connoted some form of investment. The intent of the 1933 Act was seen as "regulate[ing] the sale of investment securities to the innocent

public." 77 Cong. Rec. 2940 (1933) (remarks of Rep. McFadden). See also, *Id.* at 2912 (remarks of Rep. Mapes).

Although the term "security" has been given a broad definition, the Rights are not specifically identified in its definition nor do the Rights fall within any of the included categories. In addition, the Rights will not possess any of the characteristics of a security. They carry no rights common to equity holders (no dividends, voting or equity interest); they do not represent the obligation to pay a sum certain nor do they carry a stated interest rate; and they are not transferable or evidenced by any certificate or other instrument. Moreover, in economic reality, they do not represent investments. Thus, in our view, as discussed below, the Rights are not securities within the meaning of Section 2(1) of the 1933 Act so as to require registration under that Act.

#### 1. The Rights Are Not Investment Contracts

In our view, the Rights do not fall within the definition of an "investment contract" as crafted by the courts. The Supreme Court in SEC v. W.J. Howey Co. stated that an investment contract is a scheme which "involves an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. 293, 301 (1946). "The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By profits, the Court has meant either capital appreciation resulting from the development of the initial investment . . . or a participation in earnings from the use of investors' funds . . . In such cases the investor is attracted solely by the prospects of a return on his investment." United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 852 (1975). See, Quanex Corporation (July 28, 1989) and GID/TL, Inc. (March 21, 1989) (arguing that deferred payment rights given pursuant to a merger were cash substitutes and not an investment in a common venture).

The Celina Pre-Tender Offer Shareholders' interest in the Trust is not an investment contract within the meaning of Howey. First, such shareholders' receipt of the Rights does not involve an investment of money in a common enterprise. Indeed, the public Pre-Tender Offer Shareholders are terminating an investment, not making one. The public Pre-Tender Offer Shareholders will receive the Rights as part of the consideration for their shares of Celina disposed of in the tender offer or the merger, not in exchange for a cash investment. The Rights constitute a contingent cash payment as partial consideration for terminating their interest in Celina.

The total value of Celina is difficult to determine at the present time due to the uncertainty as to the amount of the net recovery, if any, to be obtained with respect to the Celina Claims. The public Pre-Tender Offer Shareholders, therefore, initially will receive consideration equal to the value of Celina without regard to the value of the Celina Claims. If there is any net recovery with respect to the Celina Claims, such shareholders will receive such funds on a pro rata basis. See, for example, Slater Development Corp., May 9, 1988, in which shareholders received Deferred Cash Consideration Rights entitling them to share in the recovery with respect to a patent infringement lawsuit.

Second, the Rights do not reflect an expectation of profits from the efforts of others. The Rights are part of the purchase price for Celina. They represent a contingent cash payment which is dependent upon the recovery, if any, with respect, to the Celina Claims. The occurrence of such an event will determine whether the Pre-Tender Offer Shareholders will receive any distribution from the Trust. The likelihood that the Celina Claims will be successfully pursued does not depend primarily on the efforts of Celina or the Mutual Companies.

2. The Rights Are Not Evidences of Indebtedness.

There can be no assurance or reasonable expectation that any particular amount will be received by the Pre-Tender Offer Shareholders from the Trust; the Rights do not represent an obligation to pay a predetermined amount of money, nor, indeed, to pay any money, and any recovery will depend on circumstances beyond the control of Celina; nor do the Rights bear any stated rate of interest or return. Accordingly we do not believe that the Rights are notes or other evidences of indebtedness under the definition of a security.

3. Previous No-Action Positions of the SEC.

The Staff has consistently taken the position that it would not recommend enforcement action where, pursuant to a proposed merger, contingent deferred payment rights having the same essential elements as the Rights were not registered under the 1933 Act. Although the proposed Celina transaction includes a tender offer and a distribution of the Rights to shareholders by board action rather than pursuant to a merger agreement and is, therefore, structured somewhat differently than the transactions described in the no-action letters referred to below, it is essentially the same from the point of the view of the public Pre-Tender Offer Shareholders who receive cash and Rights in exchange for their continuing interest in Celina. The Rights are an integral part of the consideration to be received

in the transaction and will be received by all Pre-Tender Offer Shareholders if a majority of the public Pre-Tender Offer Shareholders elect to accept the tender offer.

In Essex Communications Corp. (June 28, 1988), the SEC staff took a no-action position on a plan similar to the Trust. In its request letter, Essex stated that, pursuant to a proposed merger, a portion of the purchase price would be placed in an escrow account to serve as security for post-closing purchase price adjustments and indemnity claims against the selling company. Approximately 16 months after the effective date of the merger, the escrow agent was authorized to release the funds to the former shareholders of Essex. In reaching its no-action conclusions in this letter, the SEC staff focused on the following elements: 1) the rights granted to the former stockholders were an integral part of the consideration to be received in the proposed merger; 2) the rights did not represent an equity or ownership interest in the company and did not carry voting or dividend rights, or bear a stated rate of interest; 3) the rights were not transferable, except by operation of law or by will; 4) the rights were not represented by any form of certificate or instrument; and 5) any amount ultimately paid to the selling shareholders pursuant to the rights did not depend upon the operating results of the surviving company or any constituent company to the merger.

These factors were also cited by the SEC staff as key elements in its decision to not recommend enforcement action in *Quanex Corporation, supra*; *Genentech Clinical Partners* (April 28, 1989); *GID/TL, Inc.* (March 21, 1989); *First Boston, Inc.* (December 2, 1988); *Minnesota Mining and Manufacturing Company* (October 13, 1988); *Slater Development Corp., supra*; and *Lorimar, Inc.* (November 4, 1985).

The five criteria generally used in granting no-action request letters are present in the proposed Trust:

1. The Rights are an integral part of the consideration for the shares of Celina. Celina's Board of Directors has determined that it is currently difficult to estimate the value of the Celina Claims with a reasonable degree of certainty. On the other hand, the Board was advised by counsel that the Celina Claims may have substantial value, and the Board, therefore, has concluded that it would be desirable to permit the Pre-Tender Offer Shareholders to share in any such recovery.

2. The Rights will not represent any ownership or equity interest in Celina or the Mutual Companies. The holders of the Rights will have no rights, such as voting or dividend

payments, common to a shareholder of the surviving or any constituent corporation nor will they carry a stated rate of interest or return. The Rights represent only the right to receive the funds in the Trust once the amount thereof, if any, has been determined.

3. The Rights will not be transferable or assignable except by will, the laws of intestacy or other operation of law.

4. The Rights will not be represented by any form of certificate or instrument.

5. Any amount ultimately paid to the Pre-Tender Offer Shareholders will not depend on the operations of the surviving corporation or the Mutual Companies. There is no connection between the performance of the surviving corporation or the Mutual Companies and the amount of the funds to be distributed by the Trust. The amount of such funds will depend solely upon the resolution of the Celina Claims, a contingent event beyond the control of the parties.

The Staff reached a similar conclusion in Crime Control Inc. (August 3, 1987) with respect to a trust established in connection with the liquidation of a corporation. The Staff noted that "(1) beneficial interests in the Trust will be non-transferable except as described in [the] letter; (2) the Trust will have a limited purpose of orderly completion of liquidation and will have a restricted term of existence; and (3) the trustee will be required to issue annual financial accountings to the beneficiaries of the Trust."

Again, these factors are present in the Trust:

1. The Rights will not be transferable or assignable except by will, the laws of intestacy or by other operation of law.

2. The Trust exists to liquidate in an orderly manner the public Pre-Tender Offer Shareholders' interest in Celina. The Trust Agreement provides that all funds held by the Trustees will be distributed promptly after a final resolution of the Celina Claims.

3. The Trustees will make an annual financial report to the Pre-Tender Offer Shareholders.

Upon examination of the position taken by the SEC staff in the prior no-action letters referred to above, the Rights do not fit within the scope of the definition of a "security" under the 1933 Act because they lack the traditional characteristics of

a security. In addition, the public interest will not be furthered by requiring registration of the Rights under the 1933 Act because the holders of the Rights will receive an offer to purchase in connection with their consideration of the tender offer, in accordance with SEC Regulations.

B. Distribution of Rights Does Not Constitute a "Sale".

Similar to the discussion above relating to investment contracts, distribution of Rights to the Pre-Tender Offer Shareholders does not involve a "sale" which requires registration under the 1933 Act. A shareholder would receive a Right as part of the payment for all the shares of Celina. There is no additional investment required to receive a Right. No new consideration is given for it, and no separate investment decision is made. A shareholder does not have an option to forego the Right in exchange for another form of consideration. The shareholder makes an investment decision when such shareholder decides to terminate his investment in Celina for the right to receive the cash tender offer price plus the Right. To provide the shareholder with information to make such a decision, the shareholder will receive an offer to purchase regarding the tender offer, including information on the rights of Pre-Tender Offer Shareholders of Celina to receive funds from the Trust. However, there is no independent sale of Rights. The Rights are merely an attempt to determine an amount to be received by public Pre-Tender Offer Shareholders which reflects the "true" value of Celina Class A Common Shares. If a majority of the Class A Shares held by public Pre-Tender Offer Shareholders are tendered, the Rights will be distributed to all Pre-Tender Offer Shareholders without further action on their part.

1934 Act

In our view, for the same reasons set forth above, the Rights should not be considered to be a "security" or an "equity security" under the 1934 Act. Accordingly, upon the completion of the tender offer and the merger, Celina should be entitled to deregister the Class A Common Shares under the 1934 Act, the Rights should not be required to be registered under Section 12(g) of the 1934 Act and Celina and the Trustees should be exempt from periodic reporting under the 1934 Act. Crime Control, supra.

1940 Act.

The introduction to Section 3 of the 1940 Act states that an investment company must be an "issuer", and Section 3(a) (22) defines an "issuer" to be any person who issues or proposes

to issue a security. For the reasons cited above under the subheading "1933 Act", we do not believe that the Rights constitute securities for purposes of the 1940 Act. Nor do the Rights fit within the categories of investment contract or evidence of indebtedness. The Rights are not readily identifiable as any of the securities listed in the 1933 Act definition of a "security". The Rights possess the five criteria generally noted by the Staff in granting no-action positions for failure to register similar deferred payment rights. Further, because the shareholders would receive an offer to purchase describing the Rights, registration would not further the purposes of the 1933 Act. We note that the definition of a "security" under the 1933 Act is essentially the same as the definition of a "security" under the 1940 Act.

Further, the Trust should not be viewed as an "investment company" under Sections 3(a)(1) and 3(a)(3) of the 1940 Act. Under Section 3(a)(3) of the 1940 Act, an issuer may be deemed an "investment company" if it invests, holds, trades or owns investment securities exceeding 40% of the value of such issuer's total assets. Government securities are expressly exempted from the definition of "investment securities". Under the Trust Agreement, the only "investments" that may be made by the Trustees are in government securities.

Under Section 3(a)(1) of the 1940 Act an "investment company" is an issuer which is (or holds itself out as being) engaged primarily in the business of investing, reinvesting or trading in securities. The Trust is not principally engaged in the business of investing because its purpose is to provide a means to recover funds for the benefit of the former shareholder of Celina; any "investment activity" by the Trust is only incidental until the termination thereof. See, *Quanex Corporation and Damson Energy Co., L.P., supra*.

Even assuming that the Rights may constitute "securities" for purposes of the 1940 Act (and thus that the Trust may be an "issuer"), we believe that the 1940 Act should not apply to the Trust pursuant to Section 7 thereof because it is, even upon its creation, in the process of winding up; that is, its activities are limited and its term is definite.

The SEC has noted the following characteristics in granting a favorable no-action position based on Section 7:

"1. The beneficial interests in the trusts are non-transferable, except by death or operation of law.

2. The trustees are obligated under the Trust Agreement to provide financial or other information to the former stockholders.

3. The trust's purpose is the orderly liquidation of its assets and the satisfaction of its liabilities, and the trust will not engage in any ongoing trade or business.

4. The trust will be terminated in a reasonable period of time." Heizer Corp. (February 8, 1984).

As noted above, the beneficial interests in the Trust are non-transferable. The Trustees will make annual financial reports on the balance of funds in the Trust and transmit copies of such reports to the Pre-Tender Offer Shareholders. The purpose of the Trust is analogous to the liquidation of the public Pre-Tender Offer Shareholders' interests in the assets of Celina subject to Celina's liabilities. The Trust will be created to wind up the interests of Celina's shareholders in the company. The Trust will not engage in any ongoing trade or business. Finally, the Trust will terminate at a fixed time. See also, *Quanex, supra*; *Damson Energy Co., L.P., supra*; *Glenborough Limited (June 17, 1986)*.

After the Trust serves its purpose as a means of collecting the Celina Claims, the Trust will terminate at a definite time, and its assets will be distributed to the Pre-Tender Offer Shareholders of Celina. While the Trust is in existence, any cash held by the Trustees will be invested in government securities. The low amount of risk involved in an investment in government securities is consistent with the Trust's sole purpose. Any interest received would be retained in the Trust and used to pay taxes due and expenses of the Trustees, including legal fees and expenses relating to the Celina Claims.

#### Conclusion and Request

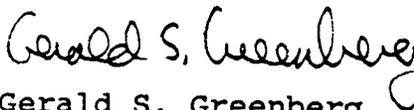
On the basis of the foregoing, we believe that the Rights are not securities that must be registered under the 1933 Act or the 1934 Act and the Trust is not an investment company" for purposes of the 1940 Act. Accordingly, we respectfully request that the Commission staff advise us in writing that it would not recommend any enforcement action to the Commission if the Rights are not registered pursuant to the 1933 Act or the 1934 Act and the Trust is not registered pursuant to the 1940 Act.

In accordance with SEC Release 33-6269, seven additional copies of this letter are enclosed.

Securities and Exchange Commission  
October 30, 1992  
Page 12

If you have any questions or wish to discuss this matter, please call Timothy E. Hoberg, J. Thomas Crutcher or Gerald S. Greenberg of this firm.

Sincerely,

  
Gerald S. Greenberg

GSG:bs

cc: Timothy E. Hoberg, Esq.  
J. Thomas Crutcher, Esq.  
Tammy P. Hamzeshpour, Esq.

CFC Shareholders' Trust Agreement

This Trust Agreement, dated as of \_\_\_\_\_, 1993, is made by and between Celina Financial Corporation, an Ohio corporation ("Celina"), as grantor and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ as trustees ("Trustees").

RECITALS:

WHEREAS, the Class A Common Shares of Celina are currently publicly traded and registered pursuant to the Securities Exchange Act of 1934;

WHEREAS, Republic Mutual Insurance Company, an Ohio mutual insurance company ("Republic Mutual"), National Mutual Insurance Company, an Ohio mutual insurance company ("National Mutual"), and The Celina Mutual Insurance Company, an Ohio mutual insurance company ("Celina Mutual" and, together with Republic Mutual and National Mutual, the "Mutual Companies"), currently own approximately 3%, 16% and 31%, respectively, of the Class A Common Shares of Celina, and Celina Mutual and National Mutual own all 100,000 outstanding Class B Common Shares of Celina;

WHEREAS, National Mutual has made a tender offer for any and all of the Class A Common Shares of Celina at a price of \$\_\_\_\_\_ per share, all conditions to the consummation of which (other than the establishment of the trust contemplated hereby and distribution of beneficial interests therein to the Celina shareholders) have been met as of the date of this Agreement, and such tender offer is expected to be consummated on \_\_\_\_\_, 1993;

WHEREAS, it is contemplated that, immediately following the consummation of the tender offer, Celina, the Mutual Companies and Celina

Acquisition Company, an Ohio corporation wholly-owned by the Mutual Companies ("CAC"), will enter into an Agreement and Plan of Merger, pursuant to which CAC will merge into Celina and the surviving corporation will be wholly-owned by the Mutual Companies;

WHEREAS, as a result of the merger, each holder of Class A Common Shares of Celina (other than the Mutual Companies, whose shares will be canceled without payment, and dissenting shareholders under Ohio Revised Code Section 1701.85) will be entitled to receive for each share owned at the time of the merger an amount in cash equal to the price per share paid in the tender offer;

WHEREAS, as partial consideration for terminating their interest in Celina either in the tender offer or the subsequent merger, Celina is contemporaneously herewith distributing to its shareholders pro rata, including the Mutual Companies and treating the Class A and Class B Common Shares and all Class A Common Shares subject to outstanding employee stock options equally (the "Pre-Tender Offer Shareholders", which term for purposes of this Agreement shall include the employees referred to in the next paragraph), prior to the consummation of the tender offer, participations in the Celina Claims (defined below) through beneficial interests in the Trust Fund as established in this Agreement;

WHEREAS, it is expected that Celina will enter into an agreement with each of its employees who holds unexercised options to purchase Class A Common Shares providing for the cancellation of such options upon the consummation of such merger in exchange for a cash payment and a beneficial interest in the Trust Fund (computed as if such employee had exercised his or her option prior to the termination of the tender offer);

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Establishment of Trust. Celina hereby assigns all of its right, title and interest in and to the claims described on Exhibit A attached hereto and incorporated herein by reference (the "Celina Claims"), together with \$\_\_\_\_\_ in cash (the "Trust Fund") to the Trustees, said cash to be used to pay legal fees and expenses incurred by the Trustees in prosecuting the Celina Claims. The Trustees hereby acknowledge receipt of such Trust Fund, and agree that they shall hold it and any other funds that may be transferred to them as part of this trust and all investments and reinvestments thereof in trust for the uses, purposes and on the terms and conditions set forth herein. Celina hereby agrees that if any recovery relating to the Celina Claims is received by Celina, Celina shall endorse and deliver to the Trustees any such checks, drafts or money so received as such payment, and agrees that until delivery of such items to the Trustees, Celina shall treat any such items as the property of the Pre-Tender Offer Shareholders held in trust for such shareholders. Celina agrees to execute any documents and take any and all other action that may be necessary or appropriate to carry out the intent and purposes of this assignment.

2. Investments. All cash in the Trust Fund shall be invested by the Trustees in securities of the United States Government or its lawful agencies having maturities of less than five years. All income earned on the investment of the Trust Fund will become part of the Trust Fund, to be held and, if not used for legal fees and expenses as contemplated by Paragraph 1 above, invested and disbursed as provided in this Agreement.

3. Duties of Trustees; Standard of Care; Indemnification. The

Trustees shall pursue the Celina Claims, the conduct of all litigation relating to the Celina Claims and any settlement negotiations relating thereto in such manner as they deem to be in the best interests of the Pre-Tender Offer Shareholders. Any recovery on the Celina Claims received by the Trustees shall be paid into the Trust Fund in trust for the Pre-Tender Offer Shareholders. The Trustees shall also maintain the Trust Fund and invest any cash in the Trust Fund as provided in this Agreement.

The Trustees shall perform their duties hereunder in good faith, in a manner they reasonably believe to be in or not opposed to the best interests of the Pre-Tender Offer Shareholders, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing their duties hereunder, the Trustees may rely, and shall be protected in acting or refraining from acting, upon any document or instrument furnished to them hereunder and believed by them to be genuine and in conformity with the provisions of this Agreement. The Trustees shall not be liable in damages for any action (or any refraining from action) taken by them under this Agreement, unless it is proven by clear and convincing evidence in a court of competent jurisdiction that such action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to Celina or the Pre-Tender Offer Shareholders, or undertaken with reckless disregard for the best interests of Celina or such shareholders. The Trustees may consult with counsel of their choice and shall be fully protected in acting or refraining to act in good faith and in accordance with the opinion of such counsel.

The Trustees shall be entitled to reimbursement for all their expenses including, but not limited to, reasonable attorneys fees incurred in connection with the carrying out of their duties hereunder.

Celina hereby agrees to indemnify and hold the Trustees harmless against any loss, liability or expense incurred, without gross negligence or bad faith on their part, in connection with any claim arising out of or in connection with their entering into this Agreement and carrying out their duties hereunder, including the costs of defending themselves against such claim.

4. Release of Trust Fund. The Trustees will hold the Trust Fund in their possession until such time as there has been an entry of a final, nonappealable judgment or a settlement of the Celina Claims and any recovery relating thereto (or any portion thereof, if such recovery is to be received in more than one installment) has been received by the Trustees, at which time, or as soon as practicable thereafter, the Trustees shall make distributions from the Trust Fund from time to time, net of any legal fees and expenses, pro rata to the Pre-Tender Offer Shareholders in such manner as the Trustees deem fair and appropriate. Celina has delivered to the Trustees a schedule showing all of the Pre-Tender Offer Shareholders and the number of Class A and Class B Common Shares held by each. The Trustees may rely on such schedule, as it may hereafter be amended or supplemented by Celina, as being accurate and complete for all purposes hereunder. This trust shall terminate automatically on the date that the last distribution of funds resulting from the recovery under the Celina Claims is made by the Trustees to the Pre-Tender Offer Shareholders. In addition, this trust may be terminated by the Trustees in their discretion if they determine that it is not in the

best interests of the Pre-Tender Offer Shareholders to continue to pursue the Celina Claims.

5. Resignation or Removal of Trustees. Any Trustee may resign on 30 days prior written notice to Celina; provided, that a new Trustee duly appointed under Paragraph 7 shall have accepted such trust and received and receipted for the assets thereof prior to the effective date of such resignation. In addition, Celina shall have the power to remove any Trustee acting hereunder only for cause. Removal of a Trustee shall not be effective until a Successor Trustee has duly accepted said trust. Any removal shall be effected by written notice to such trustee.

6. Successor Trustee. The Successor Trustee shall be appointed by the remaining Trustees. If he/she refuses to accept such appointment or having accepted ceases to act prior to the completion of the trust, the remaining Trustees shall appoint another Successor Trustee. In the event there are no remaining Trustees, Celina shall appoint a Successor Trustee or Trustees.

7. Application to Successor. This Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of Celina and each of the Trustees, and all rights, powers, privileges and immunities, duties, liabilities, responsibilities and disabilities herein conferred or imposed upon the Trustees shall apply to any Successor Trustee.

8. Miscellaneous.

(a) The Trustees shall prepare an annual financial report as to the balance of funds in the Trust Fund and transmit copies of such reports, by no later than 120 days after each calendar year-end, to the Pre-Tender Offer Shareholders and to Celina.

(b) The beneficial interests of the Pre-Tender Offer Shareholders in the Trust Fund do not represent any ownership or equity interest in Celina or the Mutual Companies, will not be represented by any certificate, and may not be transferred or assigned except by will, the laws of intestacy or by other operation of law. Such beneficial interests will be evidenced only by this Agreement and the resolutions of the board of directors of Celina approving the distribution of such beneficial interests, will not pay any dividends or bear any stated rate of interest, and will have no voting rights.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto consent to the jurisdiction of the courts of the State of Ohio to resolve any disputes hereunder.

(d) All notices and communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by first class mail as follows:

To Celina:                      Celina Financial Corporation  
   One Insurance Square  
   Celina, Ohio 45822

To Trustees:                    \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

Any party to this Agreement may change its address for the above purposes by notifying in writing the other parties of such change in address.

IN WITNESS WHEREOF, the parties have executed this Agreement as  
of the date first above written.

CELINA FINANCIAL CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

"TRUSTEES"

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All right, title and interest of Celina Financial Corporation, whether known or unknown, relating to or associated with the recovery of any monies or property or other item of value resulting from the below-mentioned legal actions including, but not limited to, any underlying right of recovery from any of the below-mentioned parties or any applicable insurance coverage available to said parties of any and all forms of damages and other relief, at law or in equity, for their actions and/or failures to act and/or their responsibility for the actions and/or failure to act on the part of other potentially liable parties, resulting from any claim, cause of action or other request for relief presently asserted or to be asserted and/or which are reasonably associated with or related to, or arising from or related to facts which are or may become the basis for the claims asserted in the below-mentioned actions:

- (1) U.S. District Court  
Central District of California  
Civ. No. 86-6243 (PAR)

Ohio Reinsurance Corporation, Hamburg International Reinsurance Corporation, Abeille-Paix Reassurances, Ltd., Walton Insurance, Ltd., Hassneh Insurance Co. of Israel, Ltd., Compagnie Transcontinentale De Reassurances, and Seguros America, S.A., Plaintiffs

- against -

Ronald C. Bengtson, Robert L. Marsh, and Does 1 through 25,  
Defendants

- (2) U.S. District Court  
Central District of California  
Civ. No. 86-6244 (PAR)

Ohio Reinsurance Corporation, Hamburg International Reinsurance Corporation, Abeille-Paix Reassurances, Ltd., Walton Insurance, Ltd., Hassneh Insurance Co. of Israel, Ltd., Compagnie Transcontinentale De Reassurances, and Seguros America, S.A., Plaintiffs

- against -

Mission Insurance Group, Inc., E.R. DeRosa, L.F. Marioni, C.H. Lindner, E.A. Smith, C.W. Perry, M.A. Mulholland, E.M. Benson, Jr., H.J. Toso, M. Van Hengel, J.M. Klein, W.A. Noll, R.F. Walker, H.S. Nye, and Coopers & Lybrand, Defendants

escrowag.2

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513-357-9670

January 8, 1993

TELECOPY

Eli Nathans, Esq.
Securities and Exchange Commission
450 Fifth Street
Washington, D. C. 20549

Re: Celina Financial Corporation

Dear Mr. Nathans:

This will confirm our discussion to the effect that the Trust Agreement referred to in our letter to the SEC dated October 30, 1992 will be revised to provide that the Trust will be terminated not later than the earlier of the resolution of the claims held by it and its third anniversary unless Celina has received further "no-action" comfort from the Staff to the effect that the term of the Trust may be extended. As we discussed, although Celina hopes that the claims held by the Trust can be resolved as promptly as possible, due to the nature of the claims it is difficult to forecast the time period which may be required for resolution.

Thank you for your assistance in this matter.

Sincerely,

Gerald S. Greenberg
Gerald S. Greenberg

GSG:bs

cc: Timothy E. Hoberg, Esq.
J. Thomas Crutcher, Esq.
Tammy P. Hamzehpour, Esq.

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January 28, 1993

## TELECOPY

Patty Goiniecki, Esq.  
Office of Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
Washington, D.C.

Re: Celina Financial Corporation

Dear Ms. Goiniecki:

In response to your requests for supplemental information in our telephone conversation of this afternoon, please be advised as follows:

1. During 1985, Celina Financial Corporation (the "Company") sold its property and casualty reinsurance subsidiary, Ohio Reinsurance Corporation ("Ohio Re") and formed a new wholly owned subsidiary, First National Indemnity Company ("First National"). In connection with the sale of Ohio Re, First National acquired certain assets and reinsured the existing liabilities of Ohio Re pursuant to a reinsurance agreement. Previously, Ohio Re had canceled all of its reinsurance agreements. Since 1985, Ohio Re has been involved in various legal proceedings with Pacific Reinsurance Management Corporation

Patty Goiniecki, Esq.  
January 28, 1993  
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("Pacific Reinsurance"), Mission Insurance Company ("Mission") and its liquidator, the California Commissioner of Insurance, and Mission Insurance Group, Inc. The legal proceedings were related to a Management Agreement entered into between Ohio Re and Pacific Reinsurance and Retrocession and Reinsurance Agreements entered into between Ohio Re and Mission. On March 28, 1990, Ohio Re was placed in liquidation by the Ohio Department of Insurance for unrelated reasons. A Commutation and Settlement Agreement was entered into as of December 30, 1991, between First National and the liquidator of Ohio Re. This agreement called for the payment of approximately \$17 million by First National and the granting of mutual general releases which discharged any further liability between First National and Ohio Re. On July 1, 1992, all conditions to the Commutation and Settlement Agreement were satisfied and such commutation and settlement was effectuated.

Two class action lawsuits against the officers of Pacific Reinsurance, Mission, the directors of Mission Insurance Group and independent accountants of the Group, were filed on September 24, 1986 by Ohio Re on behalf of itself and others similarly situated in the United States District Court for the Central District of California.

The actions charge these defendants with violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), violation of the federal securities laws, common law fraud, breach of fiduciary duty and negligence.

Ohio Re contends, among other things, that it was Pacific Reinsurance's obligation to establish proper reserves for losses and loss expenses, including incurred but not reported ("IBNR"), and that Pacific Reinsurance purposely established and maintained a knowingly inadequate IBNR formula, that Pacific Reinsurance established arbitrary reserve figures and manipulated same in order to conceal said knowingly inadequate IBNR formula and significant adverse development in prior years' loss experience and to enable Pacific Reinsurance to report consistent, favorable loss ratios on a month to month (then quarter to quarter) basis, that Pacific Reinsurance failed to establish any IBNR reserves on property business, that Pacific Reinsurance established inadequate reserves for casualty business, and that Pacific Reinsurance miscoded casualty business as property business thereby failing to establish any IBNR reserve at all. The Company believes that additional investigation performed subsequent to the filing of the lawsuit shows that significant volumes of premium were written by Pacific Reinsurance for types and classes of business that were either (1) excluded, (2) represented as being generally avoided, and (3) not underwritten

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at all, and that none of this information was ever disclosed to the participants in this underwriting pool.

2. The Company expects to deposit \$250,000 in cash with the Trustees to pay legal fees and expenses to be incurred in prosecuting these claims.

3. As at January 29, 1993, the Company had approximately 1,200 holders of record of its shares. Each of the Company's shareholders on the date of distribution of the Rights, expected to be on or about March 4, 1993, will be a beneficiary of the Trust.

4. The Trust Agreement will be revised to provide that the annual financial report will include a statement of receipts and disbursements, a report on changes in Trustees, if any, a report on developments in the litigation, including any settlement, and any other material events. Because the Trust's assets will consist solely of the claims, cash and government securities, and the Trust will not conduct any business other than the prosecution of the claims, the Company believes that engaging an independent accounting firm to audit the Trust's financial statements would be an unnecessary expense. However, the Trust Agreement will be revised to require the Trustees to certify that the statements are correct in all material respects to the best of their knowledge.

\* 5. It is contemplated that the Trustees will be three individuals who are currently directors or officers of the Company. Each of these persons is a shareholder of the Company and, accordingly, will be a beneficiary of the Trust, although their aggregate interest in the Trust is not expected to exceed 10%. Because the Trustee's objective is to achieve maximum recovery for the beneficiaries, we do not see any inherent conflict of interest in their service as Trustees. None of these persons has any independent personal interest in the litigation. In addition, we believe that, because of the amount of discretion which the Trustees will be required to exercise, it would be both difficult and expensive to engage an independent institutional trustee.

If you require any additional information, please call the undersigned or my partners, Timothy Hoberg or Thomas Crutcher.

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Because the Company plans to hold a Board of Directors meeting to consider and vote upon the transaction on February 2, 1993, your prompt response would be appreciated.

Sincerely,

*Gerald S. Greenberg*  
Gerald S. Greenberg

GSG:bs

cc: Timothy E. Hoberg, Esq.  
J. Thomas Crutcher, Esq.  
Patricia O. Lowry, Esq.  
Tammy P. Hamzehpour, Esq.