



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN STREET
CHICAGO, IL 60603
+1 312 853 7000
+1 312 853 7036 FAX

AMERICA • ASIA PACIFIC • EUROPE

March 6, 2019

1940 Act Section 3(c)(11)
1933 Act Section 3(a)(2)
1934 Act Section 12(g)(2)(H)

Division of Investment Management
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549
Attention: Paul Cellupica, Esq.
Deputy Director and Chief Counsel

Re: John Hancock Stable Value Fund Collective Investment Trust

Dear Mr. Cellupica:

We are writing on behalf of (i) the John Hancock Stable Value Fund Collective Investment Trust (the "Trust"), a bank-maintained collective investment trust ("BCT") of which Global Trust Company ("GTC"), a non-depository trust company organized under the laws of the State of Maine, is the trustee (GTC, in its capacity as trustee of the Trust, the "Trustee"), and (ii) John Hancock Life Insurance Company (U.S.A.) ("JHUSA"), which has been retained as an advisor to the Trustee to assist the Trustee in its management of the Trust. The purpose of this letter is to request a letter from the staff (the "Staff") stating that it will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if, as more fully described below, certain Puerto Rico retirement plans described in section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA", and each such Puerto Rico plan, a "Puerto Rico-Only Plan"), participate, either directly or indirectly, in certain bank-maintained collective trust funds without registering such trust funds as investment companies under the Investment Company Act of 1940, as amended (the "1940 Act") in reliance on section 3(c)(11) thereof, and without registering the beneficial interests in such trust funds under the Securities Act of 1933, as amended (the "1933 Act") or the Securities Exchange Act of 1934, as amended (the "1934 Act"), in reliance on section 3(a)(2) of the 1933 Act, and section 12(g)(2)(H) of the 1934 Act.

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The Puerto Rico-Only Plans seek to invest in the Trust, which in turn may seek to invest in certain other BCTs (the "Underlying Trusts"), notwithstanding the fact that: (1) neither the Trust nor the Underlying Trusts would be registered as investment companies under the 1940 Act; and (2) neither the beneficial interests in the Trust (the "Units") nor the beneficial interests in the Underlying Trusts (the "Underlying Trust Interests") would be registered under the 1933 Act or the 1934 Act.

Puerto Rico-Only Plans are qualified under the Puerto Rico Internal Revenue Code of 2011, as amended (the "Puerto Rico Code"), but are not described in section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), an element of section 3(c)(11) of the 1940 Act, section 3(a)(2) of the 1933 Act and section 12(g)(2)(H) of the 1934 Act.

As background, this letter first briefly describes the Trust, GTC and JHUSA and summarizes the applicable provisions of the federal securities laws and the Code relied upon by the Trust. It then describes the treatment under ERISA and the Code of two different types of employee benefit plans that include participants who are residents of Puerto Rico. Thereafter, it summarizes guidance issued by the Internal Revenue Service (the "IRS") in 2014 as to the appropriate treatment of one of such types of plans – Puerto Rico-Only Plans as described in section 1022(i)(1) of ERISA – under the Code. Finally, it provides the bases for this request, including a discussion of previous letters provided by the Staff under section 3(a)(2) of the 1933 Act and section 3(c)(11) of the 1940 Act in similar circumstances stating that the Staff would not recommend enforcement action if Puerto Rico-Only Plans participated in certain insurance company separate account group annuity contracts.

I. Brief description of the Trust, GTC and JHUSA

A. The Trust and GTC

The Trust, which was formed pursuant to a declaration of trust dated March 13, 2006, as amended (the "Declaration of Trust"), provides for collective investment on behalf of specified tax-favored retirement plans, including tax-qualified defined contribution plans ("Eligible Plans").¹

¹ Eligibility for participation in the Trust is generally limited such that any plan, trust, fund or investor that would jeopardize the Trust's exemptions from the registration requirements of the federal and state securities laws is ineligible to invest. Specifically, pursuant to the Declaration of Trust, eligibility for participation in the Trust is limited to: (i) any defined contribution retirement, pension, profit-sharing, stock bonus, or other employee benefit trust which is exempt from federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code, but excluding any self-employed individuals within the meaning of section 401(c)(1) of the Code unless such trust provides evidence reasonably satisfactory to the Trustee that it satisfies the applicable requirements of the 1933 Act and Rule 180 thereunder, (ii) any defined contribution governmental plan or unit which is described in section 818(a)(6) of the Code and satisfies the applicable requirements of the 1933 Act and the 1940 Act and any applicable rules of the Commission thereunder, (iii) any common, collective or commingled trust fund which consists solely of assets of trusts and plans described in (i) and (ii) above, (iv) any separate account of an insurance company (or a segregated subaccount thereof) which consists solely of assets of trusts and plans described in (i) and (ii) above, and (v) any other plan, trust, fund or investor whose investment in the Trust would not jeopardize the Trust's tax exemption, its treatment as a "group trust" under the Code and Revenue Ruling 81-100, as defined below, its exemption from the registration requirements of the federal and state securities laws or its accounting treatment and would satisfy any other applicable legal requirements, all as the Trustee in its sole discretion determines.

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Upon the Trustee's acceptance of a signed participation agreement from an Eligible Plan, that Eligible Plan will be admitted to the Trust, and that Eligible Plan will be deemed a "Participating Plan" that has (i) incorporated the Trust into its plan and (ii) directed the Trustee to invest in accordance with the Trust's investment guidelines all contributions received by the Trust from participants who make contributions from time to time to that Participating Plan's stable value option or transfer account balances to that Participating Plan's stable value option. As of December 31, 2017, the Trust had over 12,300 Participating Plans and assets in excess of \$2.2 billion.

As a "stable value" collective investment trust, the objective of the Trust is to preserve capital and provide stability of principal while earning current income that exceeds money market rates over the long term. In this regard, the Trust strives to preserve contributions made to it by Participating Plans and to mitigate the effect of potential losses on the investments of the Trust, thereby preserving the \$1.00 value of each Unit of the Trust. The Trust pursues these objectives by investing primarily in one or more "benefit responsive contracts"² (which may be supported by one or more portfolios of underlying assets, including units of other bank-maintained collective investment trusts), including a group annuity contract purchased by the Trust from John Hancock Life & Health Insurance Company ("JHLH"), an affiliate of JHUSA (such group annuity contract, the "JH GAC") as well as other benefit responsive contracts issued by parties unaffiliated with JHLH. These benefit responsive contracts are intended to enable the Trust to (1) honor qualified withdrawals by participants in Participating Plans as requested, up to the book value balance in a participant's account³ and (2) provide book value accounting treatment to Participating Plans for their investments in the Trust.

GTC is the trustee of the Trust. GTC is a regulated trust company and is not affiliated with JHUSA or JHLH. GTC has licensed the name "John Hancock" from JHUSA for use in connection with the Trust and it has retained JHUSA as an adviser to assist with management of the Trust. However, the Trustee is responsible for the overall management and maintenance of the Trust, including the custody of the Trust's assets and the exercise of the Trust's rights under the JH GAC and other benefit responsive contracts held by the Trust from time to time. Consequently, the Trustee is a fiduciary under ERISA with respect to all matters for which it has assumed responsibility under the Declaration of Trust, and the Trustee will exercise its responsibilities under the Declaration of Trust for the exclusive purposes of providing benefits to participants and beneficiaries of the Participating Plans and defraying the reasonable expenses of administering the Trust. The Trustee also maintains the books and records of the Trust, including records of the beneficial ownership of Units of the Trust held for the account of each

² A "benefit responsive contract" is a contract designed to pay, on the terms specified in the contract, all (or an applicable portion) of the amount required to honor qualified withdrawals by participants in plans invested in the Trust at "book value."

³ Although the Trust is designed to pay most participant withdrawal requests promptly at book value (i.e., in the amount requested, up to the full balance of the participant's account), certain withdrawal requests, including withdrawals directed, initiated or precipitated by a Participating Plan or its plan sponsor, may be subject to delays or to payout at the lower of book value or market value.

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Participating Plan, all contributions received and all distributions made in respect of such Units of the Trust, and such other books and records as are required for the preparation of audited financial statements of the Trust, and the Trustee obtains an annual audit of the Trust by an independent auditor retained by the Trustee.

B. JHUSA

JHUSA is a Michigan-domiciled life insurance company that is an indirect, wholly-owned subsidiary of Manulife Financial Corporation, a Canadian corporation. The Trustee has retained JHUSA to advise the Trustee with respect to the Trust's management generally. Advisory services include but are not limited to analyzing investment opportunities and recommending investments permitted under the Declaration of Trust, monitoring such investments and recommending actions permitted under benefit responsive contracts that may be held directly by the Trustee for the Trust, advising the Trustee with respect to the Trust's rights and obligations under such investments, calculating and communicating pricing information for Units of the Trust, and preparing and communicating the Trust's offering documents and all supplements and amendments thereto.

II. **The Trust and Exemption from Registration Requirements under the Federal Securities Laws**

The Trust would like to begin accepting investments from Puerto Rico-Only Plans without jeopardizing the availability of the 1940 Act exclusion and the 1933 Act and 1934 Act exemptions for itself and any Underlying Trusts in which the Trust may invest, notwithstanding the fact that Puerto Rico-Only Plans are not described in section 401 of the Code, a statutory element of such exclusion and exemptions.

A. 1940 Act Exclusion

The Trust falls within, and any Underlying Trust will fall within,⁴ the basic definition of "investment company" contained in section 3(a)(1)(A) of the 1940 Act.⁵ Section 3(c)(11) of the 1940 Act, however, excludes from the definition of investment company:

(11) Any employee's stock bonus, pension or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; or any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933; or any collective trust fund maintained by a bank consisting solely of assets of one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an

⁴ Please note that the term "Underlying Trust" in this letter refers only to Underlying Trusts that seek to rely on the assurances requested herein. We make no representations and request no relief with respect to any BCT that is not seeking to rely on such assurances.

⁵ The Trust and Underlying Trusts may also fall within the definition of "investment company" contained in section 3(a)(1)(C) of the 1940 Act.

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investment company under paragraph (14) of this subsection; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account."

The Trust relies upon, and any Underlying Trust will rely upon, the "collective trust fund maintained by a bank" portion of the section 3(c)(11) exclusion from 1940 Act registration.⁶

B. 1933 Act Exemption

Section 3(a)(2) of the 1933 Act exempts from registration:

". . . any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 . . . (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries . . ."

The Trust relies upon, and any Underlying Trust will rely upon, the "collective trust fund maintained by a bank" portion of the section 3(a)(2) exemption from registration of beneficial interests therein under the 1933 Act.

⁶

The Staff generally has viewed the type of collective trust fund which is referred to in the relevant clause of section 3(c)(11) of the 1940 Act to be identical to the "collective trust fund maintained by a bank" referred to in section 3(a)(2) of the 1933 Act.

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C. 1934 Act Exemption.

Section 12(g)(2)(H) of the 1934 Act exempts from the registration requirements otherwise applicable under section 12(g)(1) of the 1934 Act:

“any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer’s contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.”

The Trust relies on the section 12(g)(2)(H) exemption from registration with respect to Units issued to plans identified therein.⁷ Puerto Rico-Only Plans are not described in section 401 of the Code, and thus acceptance by the Trust of investments by Puerto Rico-Only Plans could render the Trust and any Underlying Trusts ineligible to rely upon 1934 Act section 12(g)(2)(H). Since Puerto Rico-Only Plans are substantially equivalent to plans described under section 401 of the Code in key material respects, it would therefore be consistent with the purposes of section 12(g)(2)(H) to allow the Trust to accept investments from Puerto Rico-Only Plans without having to register its Units, or for any Underlying Trusts to register Underlying Trust Interests, with the Commission as securities under the 1934 Act.

III. **The Trust and Exemption from Federal Income Tax**

No provision of the Code states that a bank-maintained collective investment trust is exempt from federal income tax. Rather, over the years, the IRS has on many occasions ruled that certain “group trusts” are tax exempt on a derivative basis as a result of the tax-exempt status of their investors, provided that certain conditions are satisfied. Revenue Ruling 81-100, 1981-1 C.B. 326⁸, as modified by Revenue Ruling 2011-1, 2011-2 I.R.B. 251 (as modified by Notice 2012-6, 2012-3 I.R.B. 293) and by Revenue Ruling 2014-24, 2014-37 I.R.B. 37 (collectively, “Revenue Ruling 81-100”), provides that retirement plans, including retirement plans qualified under section 401(a) of the Code (and certain other tax-favored retirement

⁷ Section 3(a)(12)(A)(iv) of the 1934 Act states that the term “exempted security” includes “any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph”. Section 3(a)(12)(C) of the 1934 Act defines “qualified plan” to include, subject to certain exclusions not here relevant, a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Code. The scope of section 3(a)(12)(C) is not identical to that of section 12(g)(2)(H) of the 1934 Act in respects not here relevant. The Trust may rely on portions of the section 3(a)(12) definition of exempted securities with respect to Units issued to certain types of plans identified therein, but the Trust is not requesting that the Staff take a position with respect to section 3(a)(12).

⁸ Revenue Ruling 81-100 restated the IRS’s position in Revenue Rulings 56-267 and 75-530.

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savings arrangements), can pool their assets for investment purposes in tax-exempt group trusts (each an "81-100 group trust") if certain specified requirements are satisfied, including the following:

- The group trust is itself adopted as a part of each adopting plan.
- The group trust instrument expressly limits participation to pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under section 401(a) of the Code that are exempt under section 501(a) of the Code; eligible governmental plan trusts or custodial accounts under section 457(b) that are exempt under section 457(g); section 401(a)(24) governmental plans; and certain other tax-favored retirement plans.
- Each plan that adopts the group trust is itself a trust, a custodial account, or a similar entity that is tax-exempt under section 501(a) (or 408(e)) of the Code (or is treated as tax-exempt under section 501(a)).⁹
- The group trust instrument expressly limits the assets that may be held by the group trust to assets that are contributed by, or transferred from, a group trust retiree benefit plan to the group trust (and the earnings thereon), and the group trust instrument expressly provides for separate accounting to reflect the interest that each adopting group trust retiree benefit plan has in the group trust.
- The group trust prohibits any part of its assets that equitably belongs to any adopting plan from being used for or diverted to any purpose other than the exclusive benefit of the participants and beneficiaries of such plan and is created or organized in the United States and is maintained at all times as a domestic trust in the United States.

The Trust has received a determination letter from the IRS, dated March 13, 2013, that the Trust is a group trust arrangement as described in Revenue Ruling 81-100.

IV. Puerto Rico Plans

Generally, ERISA and the Code deal with two types of retirement plans that cover residents of Puerto Rico.

First, section 1022(i)(1) of ERISA addresses retirement plans that cover only residents of Puerto Rico and that satisfy the qualification requirements under the Puerto Rico Code for exemption from Puerto Rico income tax (i.e., Puerto Rico-Only Plans), but not the qualification requirements of section 401(a) of the Code. Pursuant to section 1022(i)(1) of ERISA, a trust

⁹ Section 408(e) of the Code is applicable to individual retirement accounts ("IRAs"). Bank-maintained collective investment trusts generally do not allow investment by IRAs because the above-cited securities law exemptions are not applicable to IRAs.

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under a Puerto Rico-Only Plan is treated “for purposes of section 501(a) of the Code as an organization described in section 401(a) of such Code...”¹⁰ The sole impact of this provision is to allow trusts under Puerto Rico-Only Plans to be treated as exempt from federal income tax as well as exempt from Puerto Rico income tax.¹¹ Section 1022(i)(1) of ERISA does not, however, provide that Puerto Rico-Only Plans are in fact qualified under section 401(a) of the Code or otherwise extend qualified status under section 401(a) to such plans.

Although Puerto-Rico Only Plans are not qualified under section 401(a) of the Code, any retirement plan that covers Puerto Rico employees – Puerto Rico-Only Plans included – must satisfy the requirements of section 1081.01 of the Puerto Rico Code to be tax-qualified. Section 1081.01(a) of the Puerto Rico Code includes the qualification provisions for retirement plans in Puerto Rico. In general terms, such provisions are similar to the qualification provisions of section 401(a) of the Code.¹² In particular, section 1081.01(a)(2) of the Puerto Rico Code contains an exclusive benefit requirement similar to the requirement under section 401(a)(2) of the Code, whereby under the applicable trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the tax year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the applicable employer’s employees or their beneficiaries. In addition, although Puerto Rico-Only Plans are not subject to the provisions of the Code, pursuant to section 3(10) of ERISA (which defines “State” to include Puerto Rico), Puerto Rico-Only Plans are subject to the provisions of Title I of ERISA. One of the requirements of Title I of ERISA is the exclusive purpose requirement of section 404(a)(1)(A) of ERISA, which provides that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of (i) providing benefits to participants and their beneficiaries, and (ii) defraying reasonable expenses of administering the plan. Section 1081.01(a)(9) of the Puerto Rico Code provides that satisfying the requirements of Title I of ERISA – including the aforementioned exclusive purpose requirement of section 404(a)(1)(A) of ERISA – is a requirement for maintaining a plan’s tax qualified status under the Puerto Rico Code.

The second type of retirement plan that covers residents of Puerto Rico is that described in section 1022(i)(2) of ERISA. Section 1022(i)(2) plans cover residents of Puerto Rico and individuals who are not such residents, such as U.S. residents. Section 1022(i)(2) requires the employer’s election to have Title II of ERISA (containing section 401(a) qualification

¹⁰ Under section 1022(i)(1) of ERISA, in order for a trust forming part of a plan all of the participants of which are residents of Puerto Rico to qualify for exemption from federal income tax under section 501(a) of the Code, such trust must be exempt from tax under the Puerto Rico Code. As discussed in the next paragraph of this letter, each Puerto Rico-Only Plan will meet the requirements for tax exemption under section 1081.01(a) of the Puerto Rico Code.

¹¹ The legislative history of section 1022(i)(1) states: “[A] trust which is part of a pension, profit sharing, or stock bonus plan which is exempt from income taxes under the laws of Puerto Rico, and which is exclusively for the benefit of participants who are Puerto Rican residents, is to be treated as a tax-exempt domestic trust...” H.R. Conf. Rept. No. 93-1280, 93d Cong., 2d Sess. at 384 (1974). See also H.R. Rept. No. 93-807, 93d Cong., 2d Sess., at 163 (1974).

¹² In Revenue Ruling 2014-24, which is discussed in further detail in Section V of this letter, the IRS expressly noted that “The requirements of section 1081.1 of the Puerto Rico Code are similar to the qualification requirements of § 401(a).”

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requirements) apply. Section 1022(i)(2) also provides that upon the effectiveness of such an election, "any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code..." As explained in the relevant legislative history: "In this case, a Puerto Rican trust which meets the qualification requirements of U.S. tax law may cover U.S. mainland employees of the employer, as well as his Puerto Rican employees."¹³ Without such an election, a plan otherwise described in section 1022(i)(2) of ERISA could not be qualified under section 401(a) of the Code because one of the requirements for such qualification is that the trust for such a plan be a domestic trust; once such election is made, however, such a plan can be qualified under section 401(a) of the Code.¹⁴ Apparently for this reason, such plans are not discussed in Revenue Ruling 2014-24, discussed below, or in any of the other related revenue rulings.

V. Puerto Rico-Only Plan Issues

A. Status Under the Code

As noted above, the conditions for a bank-maintained collective investment trust to be exempt from federal income tax include a requirement that participating plans be qualified under section 401(a) of the Code, and Puerto Rico-Only Plans are not so qualified (and are not included in any other category of tax-favored retirement plans permitted to invest in 81-100 group trusts). As a result of certain changes in Puerto Rico tax law, some uncertainty arose under the Code as to whether bank-maintained collective investment trusts could accept investments from Puerto Rico-Only Plans.

In response, in 2011 the IRS issued Revenue Ruling 2011-1, which provided in relevant part that the IRS anticipates issuing guidance as to whether a Puerto Rico-Only Plan may participate in an 81-100 group trust and that, until such guidance is issued, the IRS will not treat a group trust as failing to satisfy the requirements of Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1, merely because the group trust includes the assets of a Puerto Rico-Only Plan.

Then, in Revenue Ruling 2014-24 issued on August 21, 2014, the IRS settled any remaining uncertainty by ruling definitively that Puerto Rico-Only Plans may invest in 81-100 group trusts such as bank-maintained collective investment trusts without jeopardizing such trusts' tax-exempt status. The IRS recognized that Puerto Rico-Only Plans are not qualified retirement plans under section 401(a) of the Code (and were not listed as tax-favored retirement plans under Revenue Rulings 81-100 and 2011-1). The IRS found, however, that Puerto Rico-Only Plans can satisfy the other requirements of Revenue Ruling 2011-1 applicable to group trust retiree benefit plans participating in 81-100 group trusts. For example, with respect to the

¹³ H.R. Conf. Rept. No. 93-1280, 93d Cong., 2d Sess., at 384 (1974).

¹⁴ Treas. Reg. § 1.401(a)-50, implementing section 1022(i)(2) of ERISA, states: "(a)...Thus if a plan otherwise satisfies the qualification requirements under section 401(a), any trust forming part of the plan for which the election is made will be treated as a qualified trust under that section."

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requirement that a group trust retiree benefit plan be tax exempt under section 501(a) of the Code, section 1022(i)(1) of ERISA provides that a section 1022(i)(1) trust is treated as tax-exempt under section 501(a).¹⁵ Additionally, the IRS found that permitting a Puerto Rico-Only Plan to participate in an 81-100 group trust is consistent with the legislative history of section 1022(i)(1) of ERISA because it permits a Puerto Rico-Only Plan to diversify its investments without adverse tax consequences to the group trust or its investors.

Accordingly, in Revenue Ruling 2014-24, the IRS modified Revenue Ruling 2011-1 to include Puerto Rico-Only Plans on the list of group trust retiree benefit plans eligible to participate in an 81-100 group trust such as a bank-maintained collective investment trust.

B. Issues under Federal Securities Laws

Notwithstanding the IRS's issuance of Revenue Ruling 2014-24, it is not clear that the exclusion under section 3(c)(11) of the 1940 Act and the exemptions under section 3(a)(2) of the 1933 Act and section 12(g)(2)(H) of the 1934 Act would be available to bank-maintained collective investment trusts such as the Trust that commingle tax-qualified plan assets with Puerto Rico-Only Plan assets for the same reason: that Puerto Rico-Only Plans are not, as a technical matter, qualified under section 401(a) of the Code as required by each of such sections.

VI. Requested Relief and Rationale Therefor

Given the substantial equivalency of Puerto Rico-Only Plans and qualified plans under section 401(a) of the Code, including with respect to the exclusive benefit and exclusive purpose requirements described above, we request that the Staff provide no-action assurances with respect to the Trust accepting investments from Puerto Rico-Only Plans without affecting its exclusion under the 1940 Act and its exemptions under the 1933 Act and the 1934 Act (or those of Underlying Trusts in which it may invest). If the Staff would confirm that the Trust may accept investments from Puerto Rico-Only Plans without affecting its ability to rely on such exclusion and exemptions, the result would be to foster consistency among the securities laws, ERISA and the Code, with the benefit of furthering the objectives behind the IRS's Revenue Ruling 2014-24 and those underlying section 1022(i)(1) of ERISA, as expressed in its legislative history. These objectives include the extension to Puerto Rico-Only Plans of the advantages of the broader diversification opportunities and lower investment costs that investments in bank-maintained collective investment trusts such as the Trust generally can provide.

¹⁵ The IRS also found that, with respect to the requirement of Revenue Ruling 2011-1 that the governing document of the group trust retiree benefit plan provide that the assets of the plan must be used for the exclusive benefit of the plan participants and their beneficiaries, a section 1022(i)(1) trust must, pursuant to ERISA and the Puerto Rico Code, be part of a plan that satisfies an exclusive benefit requirement that is very similar to the exclusive benefit rule of section 401(a). Due to this similarity, the IRS ruled that a Puerto Rico-Only Plan that satisfies the exclusive benefit rules of ERISA and the Puerto Rico Code is deemed to satisfy the exclusive benefit requirement of Revenue Ruling 2011-1.

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In the 1980s, the Staff issued several favorable no-action letters regarding the participation of Puerto Rico-Only Plans in insurance company separate account group annuity contracts utilizing separate exemptions for such products contained in section 3(a)(2) and section 3(c)(11). See Equitable Life Assurance Society of the United States, SEC No-Action letter (avail. Dec. 8, 1980) ("Equitable Life"); New England Mutual Life Insurance Co., SEC No-Action Letter (avail. Mar. 13, 1981) ("New England Life"); Massachusetts Mutual Life Insurance Co., SEC No-Action Letter (avail. Feb. 14, 1983) ("Massachusetts Mutual Life").

In each of these three letters, the Staff seemed to base its position on a finding that Puerto Rico-Only Plans must comply with substantially all of the statutory requirements of section 401 of the Code and that the similarity of Puerto Rico and U.S. qualification requirements is such that a no-action position is consistent with the policies underlying the section 3(a)(2) and section 3(c)(11) exemptions. See New England Mutual Life. And as stated in Massachusetts Mutual Life, "[t]here is nothing in the legislative history or elsewhere to suggest that the provisions of § 3(a)(2), Rule 180 and 3(c)(11) were specifically designed to exclude qualified Puerto Rican plans." The Staff stated in each case that so long as the Puerto Rico plans qualify for tax exemption under Puerto Rico tax law¹⁶ and the plans are subject to ERISA, investments by them in separate account group annuity contracts will not trigger the registration requirements of the 1933 Act or the 1940 Act, as they adhere to substantially the same requirements for qualification as section 401 plans. See Equitable Life.

We can think of no policy reason for treating insurance company separate accounts — which similar to bank-maintained collective investment trusts typically rely on section 3(a)(2) of the 1933 Act, section 3(c)(11) of the 1940 Act and section 12(g)(2)(H) of the 1934 Act to qualify for exemptions from the registration requirements of the securities laws — any differently from the Trust for purposes of determining whether investment by Puerto Rico-Only Plans in the Trust should impact its eligibility for such exemptions. Indeed, in the legislative history relating to the 1970 amendments to section 3(c)(11) of the 1940 Act, Congress makes clear its intention that life insurance companies and banks be treated similarly with respect to investments by pension and profit-sharing plans which meet the requirements of section 401(a) of the Code. Such legislative history provides in part:

"The purpose of this amendment [to section 3(c)(11)] is to give life insurance companies the same treatment with respect to employees' pensions and profit-sharing plans, which meet the requirements of section 401(a) of the code as is provided for banks. Despite certain differences both in the regulatory pattern now applicable to banks and insurance companies, and, in some

¹⁶ Each of these three letters noted that the relevant Puerto Rico plans qualified for tax exemption under section 3165(a) of the Puerto Rico Income Tax Act of 1954, as amended (the "1954 PR Tax Act"). section 3165(a) of the 1954 PR Tax Act included the qualification provisions for retirement plans in Puerto Rico. Effective for taxable years beginning on or after January 1, 1995, the 1954 PR Tax Act was superseded by the Puerto Rico Internal Revenue Code of 1994, as amended (the "1994 PR Code"). Section 1165(a) of the 1994 PR Code included the qualification provisions for retirement plans in Puerto Rico. Effective for taxable years beginning on or after January 1, 2011, the 1994 PR Code was superseded by the Puerto Rico Code. As mentioned above, the qualification provisions for retirement plans in Puerto Rico are now included in section 1081.01(a) of the Puerto Rico Code.

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instances, the manner in which these interests are offered and sold, your committee recognizes the fact that bank collective trust funds and insurance company separate accounts are very similar to each other and serve essentially the same purpose. Accordingly, the amendment is intended to grant banks and insurance companies equal treatment under the Federal securities laws to the extent that they compete with each other to serve as funding media for employees' pension or profit-sharing plans."¹⁷

Thus, the grant by the Staff of the relief requested would serve to maintain a "level playing field" between the Trust and competing insurance company products exempt under sections 3(a)(2) and 3(c)(11).

Now that the IRS clearly has determined that Puerto Rico-Only Plans should be treated as plans qualified under section 401 of the Code for purposes of federal income tax law as applied to bank-maintained collective investment trusts such as the Trust, the Trust and JHUSA request a letter from the Staff stating that it will not recommend that the Commission take any enforcement action if the Trust offers and sells Units to Puerto Rico-Only Plans without registration of such Units under the 1933 Act or the 1934 Act and without registration of the Trust under the 1940 Act.

Also, the Trust has the authority to invest its assets in Underlying Trusts, and it may from time to time own interests in one or more Underlying Trusts. Accordingly, the Trust requests that the Staff confirm that the Trust may invest in Underlying Trusts after the Trust's acceptance of investments from Puerto Rico-Only Plans without such investments themselves causing the interests in such Underlying Trusts to be required to be registered under the 1933 Act or the 1934 Act or such Underlying Trusts to be registered as investment companies under the 1940 Act.

In connection with making this request, the Trust represents and confirms:

- (1) any Puerto Rico-Only Plan that invests in the Trust will meet the requirements for tax exemption under section 1081.01(a) of the Puerto Rico Code;
- (2) the Trust, any Puerto Rico-Only Plan that invests in the Trust and any Underlying Trust will be subject to the provisions of Title I of ERISA;
- (3) the Trust and any Underlying Trust, but for the acceptance by the Trust of assets of Puerto Rico-Only Plans, would qualify for the exclusion described in section 3(c)(11) of the 1940 Act and the exemptions described in section 3(a)(2) of the 1933 Act and section 12(g)(2)(H) of the 1934 Act; and

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Paul Cellupica, Esq.
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- (4) the Trust and any Underlying Trust will at all times remain in compliance with the terms of Revenue Ruling 81-100, as amended.

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We request that you telephone Andrew H. Shaw (312-853-7324) or Robert P. O'Keefe (312-853-7110) of this office to discuss your preliminary findings with respect to this letter prior to issuing a formal response. Please do not hesitate to telephone either Mr. Shaw or Mr. O'Keefe if you have any questions or if you need any additional information. Your assistance in this matter is greatly appreciated.

Very truly yours,



Andrew H. Shaw



Robert P. O'Keefe