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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 92-585-CC
The Managers Core Trust
File No. 811-7028

Your letter of October 8, 1992 requests our assurance that we would not recommend that the Commission take any enforcement action under Rule 482 of the Securities Act of 1933 or Rule 34b-1 of the Investment Company Act of 1940 if The Managers Funds ("TMF"), The Managers Funds 1000 ("TMF 1000"), and certain other investment companies formed in the future advertise standardized average annual total return in the manner described in your letter.

The Managers Core Trust (the "Core") is a newly formed open-end investment company with twelve series ("Portfolios"). The Core will operate as the "core" in a "core and feeder" structure. TMF, TMF 1000, and other funds formed in the future will operate as "feeder funds."

TMF is an open-end investment company with twelve series that has been registered with the Commission since 1984. To implement the core and feeder structure, each series of TMF will contribute all of its assets to the Portfolio of the Core with corresponding investment objectives and policies, in exchange for Portfolio shares. 1/ As a result of the transactions, each Portfolio of the Core will contain the same portfolio securities previously held by each corresponding series of TMF. The Managers Funds, L.P. currently is the investment adviser to TMF; various investment managers serve as sub-advisers. After the transaction, the Core will have the same investment adviser, sub-advisers, and investment objectives as TMF.

TMF 1000 is a newly formed open-end investment company with twelve series. Each series of TMF 1000 will contribute one-twelfth of the $100,000 seed capital in exchange for shares of the corresponding Portfolio of the Core.

Each Portfolio of the Core proposes to assume the performance of the corresponding series of TMF for the period

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1/ There will be one exception. TMF's Core Equity Fund portfolio will change its investment objectives and policies when the Core begins operating and will be re-named the "Balanced Fund". Nonetheless, TMF's Core Equity Fund portfolio will not omit any of its performance data from the period prior to the changes in its investment objectives. *See* The Fairmont Fund Trust (pub. avail. Dec. 9, 1988) (staff declined to grant relief to permit a fund to eliminate performance information from its advertisements for the period preceding the date it changed its investment objectives).

from TMF's inception through the commencement of the Core's operations. For purposes of advertising standardized total return, each series of TMF, TMF 1000, and other newly created investment companies that become feeder funds will assume the performance of the corresponding Portfolio of the Core, adjusted to reflect applicable sales loads and any account fees at the feeder fund level. 2/ You assert that this method of advertising is appropriate for TMF given the fact that the only change effected by implementing the core and feeder structure will be that the portfolio of assets previously managed directly at the TMF level will instead be managed at the level of the Core. Similarly, for TMF 1000 and other newly created feeder funds, 3/ the only difference will be the expenses charged to the shareholders at the feeder level; these will be reflected in the calculation of standardized total return. 4/

On the basis of the facts and representations in your letter, we would not recommend that the Commission take any enforcement action under Rule 482 or Rule 34b-1 if TMF, TMF 1000, and other newly created investment companies that become feeder funds advertise standardized average annual total return (and

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2/ The staff previously has taken the position, under Rule 482, that a fund may not recalculate standardized total return to reflect a new Rule 12b-1 fee; that is, funds must calculate standardized total return using actual 12b-1 fees charged. See Kidder Peabody Equity Income Fund, Inc. (pub. avail. Nov. 1, 1991). In contrast, the staff interprets Rule 482 to require a fund that changes its sales load to reflect its current sales load in its standardized total return. See Investment Company Institute (pub. avail. May 13, 1988). We believe that these same standards should apply to TMF, TMF 1000, and other newly created investment companies that become feeder funds. We do not believe there is a basis for treating feeder funds differently from stand-alone investment companies for these purposes.

3/ Your letter indicates that newly created feeder funds may include variable annuity separate accounts. Please be advised that this response does not in any way address disclosure obligations of any adverse tax consequences that may result from these separate accounts investing through a "core and feeder" structure.

4/ Although you have not asked, we note that for purposes of computing yield, TMF, TMF 1000, and other newly created investment companies that become feeder funds should accrue income on a daily basis in a manner consistent with the procedures in Item 21 of Form N-4, the registration form for separate accounts organized as unit investment trusts.

non-standardized total return) in the manner described. 5/ Because this response is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion.

Jana M. Cayne

Jana M. Cayne
Attorney

5/ We express no opinion regarding core and feeder arrangements other than the one described in your letter, i.e., where an operating investment company becomes a feeder fund by exchanging its assets for shares of an operating portfolio of a core fund.

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October 8, 1992

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FEDERAL EXPRESS

Thomas S. Harman, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The Managers Core Trust; The Managers Funds 1000 - Investment Company Act of 1940, Rule 34b-1; Securities Act of 1933, Rule 482

Dear Mr. Harman:

On July 14, 1992, we filed a Registration Statement on Form N-1A (the "Core Registration Statement") with the Securities and Exchange Commission (the "SEC") on behalf of The Managers Core Trust (the "Core"). The Core will operate as the "core" in a "core and feeder" structure.[1] One of the initial feeders will be The Managers Funds ("TMF"), an existing no-load registered investment company. TMF has twelve series, each of which currently invests directly in portfolio securities. The other initial feeder will be The Managers Funds 1000 ("TMF 1000"), a newly-formed open-end investment company.[2] The Core Registration Statement provides that for purposes of calculating

[1] Structures similar to this are sometimes referred to as "hub and spoke", but because certain persons take the position that they have proprietary rights in the term, we use the "core and feeder" terminology.

[2] A Registration Statement on Form N-1A (the "TMF 1000 Registration Statement") and a Notification of Registration on Form N-8A for TMF 1000 was filed with the SEC on September 24, 1992.

the performance of each of the Core's twelve investment portfolios (each a "Portfolio"), the performance of each series of TMF prior to commencement of the Core's operations will be deemed to have been the performance of the corresponding Portfolio of the Core. The TMF 1000 Registration Statement provides that for purposes of calculating the performance of each of TMF 1000's twelve series, the performance of the corresponding Portfolio of the Core will be restated to reflect TMF 1000's fees and charges. We hereby seek the assurance of the staff of the SEC's Division of Investment Management (the "Division") that it will not recommend enforcement action against the Core, TMF 1000 or any additional feeder which may be added in the future if they calculate their performance in this manner, as described more fully below.

A. The Core

The Core will commence operations upon investment by each of the twelve series of shares of TMF and of the twelve series of shares of TMF 1000 in the Portfolio of the Core having corresponding investment objectives, policies and limitations. Each series of TMF will purchase its initial interest in the Core by contribution of all of the portfolio securities of such series to the corresponding Portfolio of the Core in exchange for an interest in the Portfolio. Each series of TMF 1000 will purchase its initial interest in the Core by contribution of its share of the $100,000 cash that will constitute TMF 1000's sole assets.[3] As of the close of business on September 24, 1992, TMF's net asset value was approximately $598 million. Accordingly, upon commencement of core and feeder operations, TMF's assets will represent more than 99.98% of the Core's assets, while TMF 1000's assets will represent less than 0.02%.

As described in the Core Registration Statement, The Managers Funds, L.P. (the "Manager"), which currently serves as TMF's investment manager, will be the Core's manager. While the sub-advisers for the various series of TMF are subject to change from time to time upon the recommendation of the Manager, it is contemplated that the sub-adviser for each series of TMF will act as sub-adviser for the corresponding Portfolio of the Core for the immediately foreseeable future. In any event, the Manager's choice of sub-advisers for the Portfolio of the Core will at all

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[3] This $100,000 will be TMF 1000's initial capital, contributed by an interested party in satisfaction of the requirement of Section 14(a) of the Investment Company Act of 1940 (the "1940 Act").

times be the same as it would have been for the corresponding series of TMF. Further, each series of TMF is currently being managed in the identical manner as the corresponding Portfolio will be managed upon commencement of the Core's operations.[3] In addition, apart from the initial investment by TMF 1000, which, as noted above, will represent a negligible portion of the total assets of the Core, the same portfolio of investments will constitute each Portfolio of the Core as comprised the corresponding series of TMF immediately prior to commencement of core and feeder operations. We therefore believe it is appropriate to treat the previously existing feeder's performance record as the performance record of the newly-created core.[4] We are not aware of any precedent directly addressing this issue. However, we believe that it is consistent with Division positions in analogous situations, and with the policies underlying the SEC's rulemaking regarding mutual fund performance advertising, as interpreted by the Division.

The conversion of TMF from an entity which invests directly in a particular type of portfolio security to one which invests in the identical type of portfolio indirectly, through the Core, is analogous to a change in TMF's legal form. The Division has taken no-action positions in situations where registered investment companies have proposed changes in domicile (e.g., from Delaware corporation to Maryland corporation) or legal form (e.g., from separate corporations or trusts to different series of a single registered investment company), or both.[5] These no-action positions have enabled the successor investment company to simplify the reorganization process. While this line of no-action letters does not generally address whether

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[3] There is one exception. As described in proxy materials that the Division previously reviewed, TMF's Core Equity Fund series will implement a change in investment objectives and policies concurrently with commencement of core and feeder operations, and will be re-named the "Balanced Fund." This change, which will involve a change in sub-advisers, was approved by shareholders at a meeting held on September 18, 1992.

[4] We note that the Core will not be offered to the public, but will be offered only in private placement transactions. Accordingly, the Core's performance will not be advertised to the public, because investors could not obtain the Core's performance without the charges incurred at the feeder level.

[5] See, e.g., CIGNA Aggressive Growth Fund, Inc. (Feb. 15, 1985); United States Gold Shares, Inc. (Sept. 17, 1984).

the successor may advertise the predecessor's performance as its own,[6] this has in fact been the accepted practice, as evidenced by references in no-action letters relating to performance advertising. For example, in two no-action letters where investment companies proposed to exclude periods prior to a change in investment advisers from calculations of annual total return, the background information in the incoming letters makes clear that prior to (and separate from) the change in advisers, the investment companies had succeeded to other investment companies.[7]

We recognize that the reorganization of TMF as a feeder in a core and feeder structure is not identical to the situation in the CIGNA line of no-action letters, in that TMF will continue to exist following commencement of core and feeder operations. However, as in a CIGNA type reorganization, the Core will succeed to all of TMF's net assets, and these for all practical purposes will constitute all of the Core's assets. The Core will manage these assets according to identical investment objectives, strategies and restrictions, and with the same choice of investment advisers, on a going-forward basis as TMF did prior to the reorganization. While the Core will not adopt TMF's registration statement, the disclosures regarding investment objectives, policies and limitations in the Core Registration Statement and in TMF's registration statement are identical, other than changes necessitated by the fact that the Core invests directly in portfolio securities while TMF invests indirectly, through the Core.

In addition, we believe it would be contrary to the policies underlying the SEC's rules relating to performance advertising to allow the Core to quote performance without

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[6] But see Commonwealth Funds (June 14, 1989), where the Division expressly permitted a successor to two separate funds to advertise only the performance of the fund with the higher expense ratio on a going-forward basis, based on a representation that both of the predecessor funds had been managed similarly to the successor fund.

[7] Philadelphia Fund, Inc. (October 17, 1989) (investment company which sought to exclude performance prior to a 1987 change in investment advisers was the Maryland successor, through a 1984 reorganization, to a Delaware corporation); and Investment Trust of Boston Funds (April 13, 1989) (certain series of the investment company had succeeded to free-standing investment companies).

including TMF's performance prior to commencement of core and feeder operations. In adopting amendments to these rules in 1988 (the "1988 advertising rule amendments"), the SEC stated that the amendments were "designed to prevent misleading performance claims by funds and to permit investors to make meaningful comparisons among fund performance claims in advertising."[8] In no-action letters issued subsequent to adoption of the 1988 advertising rule amendments, the Division has stated that "it would be inappropriate ... to permit a fund to eliminate past performance results from its performance advertising" if the SEC's policy is not to be eroded.[9] Thus, the Division has declined to give no-action assurance where a fund wished to exclude performance from a period prior to a change in investment strategies from its performance quotations.[10] In contrast, the Division has allowed funds to exclude periods prior to a change in investment advisers where the new adviser is not affiliated with the previous adviser.[11]

The theory underlying these letters is that the mutual fund performance rules are designed to ensure that performance advertising accurately reflects a particular investment adviser's performance, and that the adviser's performance record should not be distorted, intentionally or unintentionally, by legal manipulations which have no relevance to the nature or quality of the investment management service being provided. Thus, absent a dramatic change in a fund's management, past performance cannot be excluded from presentations of performance data. In the Core and TMF situation, management and investment strategies will in every realistic sense remain the same after the core and feeder

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[8] <u>Advertising by Investment Companies</u>, Securities Act Rel. No. 6753, Investment Company Act Rel. No. 16,245 (Feb. 2, 1988).

[9] <u>John Hancock Asset Allocation Trust</u> (January 3, 1991); <u>The Fairmont Fund Trust</u> (December 9, 1988).

[10] <u>John Hancock</u>, <u>supra</u>.

[11] <u>See</u> <u>Unified Funds</u> (April 23, 1991)(new adviser not owned, controlled or managed by any prior owner or any principal thereof); <u>Philadelphia Fund, Inc.</u> (October 17, 1989); <u>Investment Trust of Boston Funds</u> (April 13, 1989). Compare <u>Zweig Series Trust</u> (January 10, 1990), where the Division refused to take a no-action position because an individual who was the president and a director of a predecessor adviser was also president of the new adviser, and in addition served as chairman and chief executive officer of the fund during both advisers' tenure.

reorganization. The only change will be that the portfolio of assets previously managed directly at the TMF level will instead be managed at the level of the Core, in combination with the initially insignificant assets contributed by TMF 1000.

We do not believe that the Growth Stock Outlook Trust, Inc. (April 15, 1986) no-action position is apposite in this context. In that letter, the Division stated that newly-formed, closed-end investment companies may include information regarding the performance of similar accounts managed by the fund's adviser in the fund's prospectus and advertisements for the first year of operations. Growth Stock is predicated on the theory that the performance of similar accounts managed by the same adviser is useful as a rough indication of an adviser's performance until the fund itself develops a track record. However, as stated above, we believe that the track record of TMF and of the Core are one and the same. TMF's record is not simply the record of a roughly similar account managed by the adviser. Accordingly, we do not believe it is appropriate to limit use of TMF's performance history to the first year of the Core's operations.

B. The New Feeders

As described above, it is currently contemplated that core and feeder operations will commence with two feeders, TMF and TMF 1000. Additional feeders may be added in the future. These feeders could be open-end management investment companies, like TMF and TMF 1000 (but having different distribution arrangements, including different sales loads and distribution fees), insurance company separate accounts issuing variable annuity contracts (which may be organized as unit investment trusts), or pooled investment vehicles organized and offered to investors outside the United States. We propose that TMF 1000 and any future feeder which has been newly-created, calculate its performance by restating the Core's one, five and ten year total return to reflect the deduction of fees and expenses applicable to the new feeder.[12] These fees and expenses would include sales charges and Rule 12b-1 fees, and in the case of an insurance company separate account, charges for mortality and expense guarantees and insurance-related administrative charges.

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[12] We are not requesting that the Division address how a feeder which previously invested directly in portfolio securities, or which invested through a core vehicle other than the Core, would calculate its performance following investment in the Core.

We believe that this method of calculating a newly-created feeder's performance is consistent with the policies and positions discussed in the section of this letter relating to the Core.[13] It is also consistent with the policies underlying SEC and Division positions taken in the context of adding a new class of shares to an existing mutual fund, or changing an existing fund's distribution structure. The addition of a new feeder is analogous to each of these situations in that in each instance, the underlying portfolio of investment securities is not affected by the changes, and continues to be managed according to identical investment objectives, strategies and restrictions after the changes as it was before.

In exemptive orders permitting the addition of a new class of shares (the "New Class") to an existing mutual fund, the SEC has required that any performance advertising for the New Class state also the performance of the pre-existing class of shares (the "Old Class").[14] This reflects the policy that it would be misleading to allow a fund to exclude earlier performance data simply because its fee structure has changed. However, the Division has permitted a New Class to calculate its performance from the date of its creation only, rather than restating the performance of the Old Class. The Division's position was based in part on the difficulty of arriving at an accurate restatement.[15] This position was explained more fully in a subsequent no-action letter, where the Division stated that recalculating performance following a decrease in expenses would require a fund to "speculate regarding how it would have invested the additional fund assets and what the additional assets would

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[13] <u>See</u> text at notes 8-11, supra.

[14] <u>See</u>, <u>e.g.</u>, <u>Putnam Adjustable Rate U.S. Government Fund, et. al.</u>, Investment Company Act Rel. No. 18,676 (April 24, 1992); <u>Merrill Lynch, et. al.</u> Investment Company Act Rel. No. 16,535 (August 23, 1988).

[15] <u>Merrill Lynch Asset Management, Inc.</u> (March 9, 1990). <u>See</u> <u>also</u> the Division's May 1988 interpretive letter regarding performance calculations, in which the Division stated that a fund which changes its Rule 12b-1 fees should not restate its performance but should add an explanatory footnote regarding the effects of the change. <u>Investment Company Institute</u> (May 13, 1988), at question 27.

have earned."[16] The Division added that it wished to avoid "frequent and burdensome recomputation of net asset values" and that if net asset values were recomputed, "it would be difficult for [SEC] examiners to determine accurate computation of performance."[17]

However, in the core and feeder context, no recomputation of the Core's net asset value would be required. The Core's fees and expenses, and the Core's historical performance, will not change as the result of the addition of a new feeder. The only calculations that will be made will be to reflect deduction of the additional fees and charges imposed at the level of the new feeder. Accordingly, the proposed method of calculating a new feeder's performance embodies the Division's policy against eliminating past performance results without creating any of the problems that arise in the context of new classes of shares or fee changes.

If you have any questions, or require any additional information regarding this letter, please contact the undersigned at (212) 891-9459, Joel H. Goldberg at (212) 891-9359 or Howard Surloff at (212) 891-9426.

Very truly yours,

Judith L. Shandling

Judith L. Shandling

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[16] Kidder, Peabody Equity Income Fund, Inc. (November 1, 1991).

[17] Id.