29 APR 1994

Our Ref. No. 93-212-CC
The PanAgora Group Trust
File No. 132-3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter of April 14, 1993 requests assurance that we would not recommend enforcement action to the Commission if The PanAgora Group Trust (the "Group Trust") counts each 401(k) trust that invests in the Group Trust as a single owner of its outstanding securities for purposes of Section 3(c)(1) of the Investment Company Act of 1940 ("1940 Act"). 1/ You assert that the Group Trust may count each 401(k) trust as a single owner because the 401(k) trusts would not own voting securities of the Group Trust and, therefore, would not be required to attribute their ownership of the Group Trust's securities to the 401(k) plan participants under Section 3(c)(1)(A). Because we conclude that any defined contribution plan participant who directs a plan investment into the Group Trust or one of the unregistered investment funds comprising the Group Trust (each an "Investment Fund") is a beneficial owner of the Group Trust's or Investment Fund's outstanding securities under Section 3(c)(1), we do not reach the issue of whether the Group Trust's outstanding securities are voting securities for purposes of the attribution provisions of Section 3(c)(1)(A).

PanAgora Asset Management, Inc. ("PanAgora") proposes to establish the Group Trust as a pooled investment vehicle for tax-qualified pension, profit-sharing, and stock bonus plans, including 401(k) plans. PanAgora will be the investment adviser to the Group Trust and the approximately 42 separate Investment Funds that comprise the Group Trust. 2/ The 401(k) plans typically will permit participants to direct the investment of the assets in their plan accounts. Plan participants may choose to invest some or all of their plan assets in the Group Trust and how to allocate those assets among the Investment Funds.

Section 3(c)(1) excludes from regulation under the 1940 Act private investment companies in which there is no significant public interest and which are, therefore, not appropriate subjects of federal regulation. 3/ Under Section 3(c)(1), the

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1/ Section 3(c)(1) provides that an issuer whose outstanding securities are beneficially owned by not more than one hundred persons and which is not making and does not propose to make a public offering of its securities is not an investment company.

2/ Telephone conversation between Edward Young, counsel to PanAgora, and the undersigned (Aug. 4, 1993).

3/ See H.R. Rep. No. 1341, 96th Cong., 2d Sess. 35 (1980). See generally Investment Trusts and Investment Companies:

(continued...)

existence of over 100 beneficial owners or a public offering indicates that there is a significant public interest and that the issuer should be regulated under the 1940 Act.

In determining the number of beneficial owners for purposes of Section 3(c)(1), a "company," such as a trust or partnership, that invests in a private investment company typically is presumed to be a single beneficial owner unless certain attribution provisions contained in Section 3(c)(1)(A) are applicable. The staff of the Commission has taken the position that if a "company" that invests in a private investment company is managed as a device for facilitating individual investment decisions, then the company's securityholders should be deemed to be the beneficial owners of the company's investment in the private investment company. For example, in WR Investment Partners (pub. avail. Apr. 15, 1992), the staff took the position that the limited partners of a partnership were the beneficial owners of the partnership's interest in a private investment company because the general partner, which made all of the investment decisions for the partnership, would consult with the limited partners about their individual investment objectives and vary, from investment to investment, each limited partner's percentage share of profits and losses based on individual circumstances. Similarly, the staff took the position in Six Pack (pub. avail. Nov. 13, 1989) and Tyler Capital Fund, L.P./ South Market Capital (pub. avail. Sept. 28, 1987) that the partners of a general partnership were the beneficial owners of the partnership's investment in a private investment company when the partnership permitted each partner to determine the amount of his or her contribution to each particular investment, based on his or her individual investment objectives. 4/

3/(...continued)
Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 179-81 (1940).

4/ See also Merrill Lynch & Co., Inc. (pub. avail. Apr. 23, 1992) (staff granted no-action relief when individual general partners would not make decisions regarding allocation of their capital contributions or the partnership's investments). Rule 203(b)(3)-1 under the Investment Advisers Act of 1940 ("Advisers Act") reflects a similar interpretive position. Section 203(b)(3) of the Advisers Act provides that an investment adviser that has fewer than fifteen clients and does not hold itself out generally to the public as an investment adviser is not required to register. Rule 203(b)(3)-1(b)(2)(ii) provides that, for purposes of Section 203(b)(3), a general partner of a limited partnership may count the partnership as a single client only where "the general partner . . . provides
(continued...)

A participant-directed defined contribution plan (including both 401(k) and other types of defined contribution plans) that permits participants to allocate their plan account assets among various investment alternatives to attain individualized levels of potential risk and return is designed to facilitate individual investment decisions. Each participant's retirement benefits will depend in part on the performance of the participant's investment choices.

Solely for purposes of the Section 3(c)(1) exception, therefore, we would consider a defined contribution plan participant who decides whether or how much to invest in a private investment company to be a beneficial owner of the company's securities. 5/ We thus believe that the Group Trust

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4/(...continued)
investment advice to the partnership based on the investment objectives of the limited partnership." Thus, under Rule 203(b)(3)-1(b)(2)(ii), the general partner must provide investment advice to the limited partners as a group, rather than to the limited partners individually. See Investment Advisers Act Rel. 956 (Feb. 22, 1986) (proposing Rule 203(b)(3)-1); Burr, Egan, Deleage & Co. (pub. avail. Mar. 26, 1987) (general partner required to count each limited partner as a client when limited partners could choose between two pools of assets in the same limited partnership to accommodate their individual tax objectives).

5/ Our position does not apply to tax-qualified defined benefit plans or to tax-qualified defined contribution plans that do not permit participants to decide whether or how much to invest in particular investment alternatives.

We note that our position does not depend on the application of the Section 3(c)(1)(A) attribution provisions and, therefore, differs from our response to Intel Corporation (pub. avail. Nov. 18, 1992). In Intel, the staff stated that for purposes of Section 3(c)(1)(A), participants in a voluntary, contributory defined contribution plan hold outstanding securities of the plan and, therefore, the plan's ownership of more than 10% of a private investment company's voting securities should be attributed to the participants. The staff did not consider whether the participants should be deemed beneficial owners of a private investment company's securities for purposes of Section 3(c)(1) independently of the attribution provisions. Our response also limits the position we took in Morrison & Foerster (pub. avail. Feb. 18, 1979). In that letter, we took the general pcsition that employee benefit plan

(continued...)

and an Investment Fund must count as beneficial owners for purposes of Section 3(c)(1) all participants in participant-directed defined contribution plans who invest in the Group Trust or that Investment Fund.

Richard F. Jackson
Special Counsel

5/(...continued)
participants would not be deemed the beneficial owners of a plan's investment in a private investment company independently of the attribution provisions. While it is unclear from that letter what types of employee benefit plans were intended to be covered, this response explicitly limits the interpretation of Section 3(c)(1) in Morrison & Foerster to employee benefit plans in which participants do not decide whether or how much to invest in private investment companies.

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Section 3(c)(1) of the Investment Company Act of 1940

April 14, 1993

ACT ICA
SECTION 3(c)(1)
RULE
PUBLIC AVAILABILITY 4/29/94

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 PanAgora Group Trust

Dear Mr. Harman:

We request that the staff of the Commission take a no-action position with respect to the applicability of the attribution rule of Section 3(c)(1)(A) of the Investment Company Act of 1940, as amended (the "1940 Act"), to certain 401(K) plans and trusts ("401(K) Trusts") which may invest in The PanAgora Group Trust (the "Group Trust"). The Group Trust intends to rely upon the exception from the definition of an investment company set forth in Section 3(c)(1) of the 1940 Act, in the manner described in this letter.

BACKGROUND

The Group Trust. The Group Trust is being established by PanAgora Asset Management, Inc. ("PanAgora") and Boston Safe Deposit and Trust Company ("BSDT") as a collective investment vehicle for employee pension, profit-sharing and stock bonus plans which meet certain criteria contained in the Internal Revenue Code of 1986, as amended ("Participating Trusts"). BSDT will serve as trustee of the Group Trust and PanAgora will serve as investment manager. The Group Trust will consist of approximately 42 separate investment funds ("Investment Funds"), each with its own investment objectives and its own universe of eligible portfolio securities.

Under the terms of the Group Trust's Agreement of Trust, which constitutes the fundamental charter document of the Group Trust, most management powers will be vested in PanAgora as investment manager and the remaining management powers will be vested in BSDT as trustee. Participating Trusts, as investors in

the Group Trust, will have no management powers and no right to vote on any matter whatsoever. PanAgora will not be subject to removal as investment manager in any circumstances and its resignation as investment manager will cause the Group Trust to terminate. BSDT will be subject to removal by PanAgora upon 60 days' notice and, in the event of BSDT's resignation or removal, PanAgora will be authorized to appoint a successor trustee.

The Group Trust will rely on Section 3(c)(1) of the 1940 Act for exemption from registration under that Act. The Group Trust has at present no beneficial owners of its securities, and it intends to have not more than 100 beneficial owners of its securities, as that term is defined in Section 3(c)(1). The Group Trust is mindful of the staff's position that exemption from registration is not available under Section 3(c)(11) of the 1940 Act for a group trust unless the trustee acts as its own investment manager. Accordingly, for the purposes of this letter, the Group Trust is relying solely on Section 3(c)(1) rather than on Section 3(c)(11).

None of the assets of the Group Trust will be invested in securities of PanAgora since, among other things, PanAgora is a closely-held company.

Investment by 401(K) Plans. Employee retirement plans which qualify under Section 401(K) of the Internal Revenue Code of 1986, as amended (the "Code"), come within the definition of Participating Trust and are eligible to invest in the Group Trust. As was the case in the recent Intel no-action letter (November 18, 1992), those Participating Trusts which are qualified under Section 401(K) of the Code are expected to be, in part, both voluntary and contributory. Other Participating Trusts, which are not organized under Section 401(K), will be entirely non-voluntary and non-contributory.

In certain matters involving the investment of the assets of each 401(K) Trust, it is expected that the plan fiduciaries of the 401(K) Trust will be required to act upon the instructions of individual employees ("Employee Participants") within the limitations established by the Trust's agreement of trust, subject to the right of the Trustees or the sponsoring employer to select investment vehicles for the 401(K) Trust and to amend the agreement of trust.

It is expected that Employee Participants in 401(K) Trusts will typically be permitted under the terms of their respective trust instruments to direct the investment of their account balances (including both the employer's contributions and the

Employee Participants' contributions) in not more than three or four generic investment alternatives, each with its own stated investment objectives such as capital preservation, income or growth ("Generic Investment Alternatives"). The plan fiduciaries of the 401(K) Trusts, who will not be affiliated with PanAgora, will have discretion to select and change the investment vehicles in which the moneys allocated to the various Generic Investment Alternatives are to be invested. These non-affiliated plan fiduciaries will have the power at any time to remove the Group Trust as an investment vehicle altogether. For so long as the Group Trust is selected as an investment vehicle by the non-affiliated plan fiduciaries of such a 401(K) Trust, one or more Investment Funds of the Group Trust will be selected by such plan fiduciaries as an investment vehicle for one or more of the Generic Investment Alternatives. A typical example might be as follows:

401(K) Trust Generic Investment Alternatives	Corresponding Investment Funds of the Group Trust
Money-market	none
Income	none
Balanced	PanAgora Tactical Asset Allocation Fund
Growth	PanAgora Active Core Fund

In some cases, an Investment Fund may be selected as the sole investment vehicle for a 401(K) Trust Generic Investment Alternative. In other cases, a combination of one of the PanAgora Investment Funds and a non-affiliated investment vehicle may be selected as investment vehicles for a Generic Investment Alternative. For example, funds allocated to a 401(K) Trust growth stock Generic Investment Alternative might be invested 40% in a PanAgora growth stock Investment Fund and 60% in a Fidelity or Scudder growth stock fund.

Certain other 401(K) Trusts may afford each Employee Participant the opportunity to designate all or specified portions of his or her account balance for investment in the Group Trust, where such amounts will be further allocated by the Employee Participant to one or more of the 42 Investment Funds. Typically, this selection process would focus on eight or ten of the Investment Funds since many of the 42 Investment Funds (such as single-country index funds) are designed to be of more interest to institutional investors than to individual investors. The Trustees will always retain the right to select investment vehicles other than the Group Trust, or to remove the Group Trust as a designated investment vehicle for such 401(K) Trusts.

PROPOSED ACTIVITIES

PanAgora proposes to admit 401(K) Trusts as investors in the Group Trust. For the reasons set forth below, PanAgora proposes to count each 401(K) Trust as a single beneficial owner.

DISCUSSION

Section 3(c)(1)(A) of the 1940 Act provides that, for purposes of determining under Section 3(c)(1) whether an issuer's securities are beneficially owned by not more than 100 persons,

> "[b]eneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10% or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in the sub paragraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10% of the value of the company's total assets."

The term "company" is defined in Section 2(a)(8) of the 1940 Act to include a corporation, partnership, trust, fund or any organized group of persons whether incorporated or not. Since each Participating Trust must be organized as a trust in order to meet Internal Revenue Code criteria, each will constitute a "company" for purposes of Section 3(c)(1)(A) of the 1940 Act.

A Participating Trust should be considered to be a single beneficial owner of the Group Trust's securities if it meets either of the following tests:

1. It does not own voting securities of the Group Trust; or

2. It does not own 10% or more of the Group Trust's voting securities or, if it does, it has invested less than 10% of its total assets in entities which rely on the Section 3(c)(1) exemption.

PanAgora believes that both of the foregoing tests will be satisfied for the following reasons:

1. Since the Agreement of Trust will provide that the Participating Trusts have no power to remove or replace the

investment manager or the trustee, and no power to vote upon or consent to any other matter relating to the Trust, then the investments of the Participating Trusts in the Trust will not constitute "voting securities" within the meaning of Section 3(c)(1), and the look-through provisions of Section 3(c)(1) will be inapplicable.

2. Any 401(K) Trust that seeks to account for 10% or more of the aggregate investment in the Group Trust will be required to certify as to whether or not it has invested 10% or more of its total assets in the Group Trust and other entities which rely on the Section 3(c)(1) exemption. Each 401(K) Trust which either is less than a 10% investor in the Group Trust, or has not invested 10% or more of its total assets in the Group Trust and other entities which rely on the Section 3(c)(1) exemption, will have a separate and distinct ground for exemption from the application of the attribution rules, in addition to the ground that it does not own any voting securities of the Group Trust. PanAgora expects that most, if not all, of the 401(K) Trusts will fall into this category.

In reaching the foregoing conclusions, PanAgora believes that those Employee Participants who designate specific Investment Funds within the Group Trust should receive the same treatment as those who choose between a limited number of Generic Investment Alternatives because in both cases investment authority is ultimately within the control of the unaffiliated plan fiduciaries and the degree of choice which an Employee Participant may exercise within the parameters established by the plan fiduciaries differs only in degree.

Conclusion. In conclusion, we request your concurrence in our view that Employee Participants in the 401(K) Trusts should not be deemed to be holders of "outstanding securities" of the Group Trust and will not be required to be counted as beneficial owners of a Section 3(c)(1) entity pursuant to the attribution rule set forth in Section 3(c)(1)(A) of the 1940 Act.

Should the staff need any further information, please do not hesitate to contact the undersigned at (617) 526-6659.

Sincerely yours,

Edward Young