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FEDERAL EXPRESS

April 25, 1995

Re: Salomon Brothers Inc
Statutory Sections Discussed: Investment Company Act
Sections 2(a)(3), 2(a)(20)(B), 17(a) and 17(e)

Jack W. Murphy
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Murphy:

Salomon Brothers Inc and its affiliates ("Salomon") propose to engage in principal and agency transactions with or on behalf of certain present and future investment companies registered under the Investment Company Act of 1940, as amended (the "1940 Act") (or portfolios thereof, in the case of a series registered investment company). The issue presented is whether Salomon would be permitted to engage in such transactions when Salomon Brothers Asset Management Inc ("SBAM Inc"), Salomon Brothers Asset Management Limited ("SBAM Limited") or any of their investment advisory affiliates (together with SBAM Inc and SBAM Limited, a "Salomon Adviser") is a second-tier affiliate (as defined below) of the investment company (or portfolio thereof) solely by reason of the sub-advisory relationships described below. This letter is to request your confirmation that the staff of the Securities and Exchange Commission (the "Staff"), based on the facts, circumstances and representations described herein, will not recommend enforcement action against Salomon should it engage in the proposed transactions.

I. Facts

A. Salomon

Salomon Brothers Inc is a registered broker-dealer. Together with its broker-dealer, bank and other affiliates, Salomon Brothers Inc conducts a global investment banking business, including providing analysis, market-making and brokerage services primarily to institutional investors. Salomon Brothers Inc, together with its affiliates, is a major dealer in government securities in New York, London, Frankfurt and Tokyo and belongs to major international securities, financial futures and options exchanges and other organized markets. Salomon Brothers Inc and its affiliates are also major participants in the over-the-counter markets.

SBAM Inc and SBAM Limited, together with their affiliates in Tokyo and Frankfurt, provide a range of fixed-income and equity investment advisory services to various individuals and institutional clients throughout the world, and serve as investment adviser to various registered investment companies. As of December 31, 1994, SBAM Inc and SBAM Limited together had in excess of $12 billion of assets under management. SBAM Inc and SBAM Limited are each registered as investment advisers under the Investment Advisers Act of 1940, as amended.

Salomon Brothers Inc, SBAM Inc and SBAM Limited are each wholly owned subsidiaries of Salomon Brothers Holding Company Inc, which is wholly owned by Salomon Inc.

B. Sub-Advisory Relationships

1. *Introduction*

As described more fully below, SBAM Inc and/or SBAM Limited currently serve as sub-advisers to certain portfolios of Hercules Fund Inc., New England Zenith Fund, North American Funds, NASL Series Trust, WNL Series Trust[1/] and JNL Series Trust (collectively, the "Funds"). Each of the Funds is registered under the 1940 Act as an open-end management investment company.[2/] In general, the Funds have one or more sponsoring investment advisers that sub-contract the day-to-day management of

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1/ It is expected that WNL Series Trust will commence investment operations on or after May 1, 1995.

2/ Certain Funds (or portfolios thereof) may be eligible investments for certain variable annuity products.

some or all of the portfolio's investments to various sub-advisers, including SBAM Inc and/or SBAM Limited. A sub-adviser to a portfolio is responsible for all investment decisions regarding the purchase, sale and holding of the portfolio's securities. A sub-adviser also has full discretion as to the selection of brokers and dealers with which the portfolios execute securities transactions. The Fund and the sponsoring investment adviser generally retain a right of supervision over the sub-adviser's activities with respect to the portfolios.

The Fund's sub-advisory arrangements with SBAM Inc and/or SBAM Limited are generally terminable by the Fund, the holders of a majority of the securities in a portfolio, the sponsoring investment adviser or SBAM Inc or SBAM Limited, as the case may be, subject only to a notice requirement. In the future, sub-advisory relationships with a Salomon Adviser may be terminable on similar or different bases. The officers and "interested" directors for the Funds are generally officers or employees of the sponsoring investment adviser and accordingly, no officer, director or employee of Salomon Brothers Inc, SBAM Inc, SBAM Limited or any other Salomon Adviser serves as a director or officer of any Fund. In the future, an officer, director or employee of a Salomon Adviser may serve as assistant secretary or assistant treasurer of a Fund if that service would facilitate execution of documents or would otherwise facilitate the day-to-day management by the Salomon Adviser of a portfolio. Neither Salomon nor any Salomon Adviser is an affiliated person (as defined in the 1940 Act) of the sponsoring investment adviser or any other sub-adviser to any of the Funds.

2. *The Existing Funds*

Hercules Funds Inc. ("Hercules Fund") currently has nine portfolios. Hercules International Management L.L.C. serves as investment adviser for each portfolio. SBAM Limited is a sub-adviser to the two portfolios, the Hercules World Bond Fund and the Hercules Global Short-Term Fund. In addition, SBAM Inc provides certain advisory services to SBAM Limited for the benefit of the Hercules World Bond Fund and the Hercules Global Short-Term Fund and serves as sub-adviser to three other portfolios, the Hercules Money Market U.S. Dollar Fund, the Hercules Emerging Markets Debt Fund and the Hercules Emerging Markets Debt U.S. Dollar Fund.

New England Zenith Fund ("New England Fund") currently has fifteen portfolios. New England Fund has various investment advisers and sub-advisers. TNE Advisers Inc. acts as investment adviser and SBAM Inc acts as sub-adviser to two portfolios, the Salomon Brothers U.S. Government Series and the Salomon Brothers Strategic Bond Opportunities Series. In addition, SBAM Limited provides certain advisory services to SBAM Inc relating to currency transactions and investments in non-

dollar denominated securities for the benefit of the Salomon Brothers Strategic Bond Opportunities Series.

North American Funds ("NAF")[3/] currently has ten portfolios. NASL Financial Services, Inc. ("NASL Financial") serves as investment adviser to each portfolio. SBAM Inc serves as sub-adviser to three portfolios, the U.S. Government Securities Fund, the Strategic Income Fund and the National Municipal Bond Fund. In addition, SBAM Limited provides certain advisory services to SBAM Inc relating to currency transactions and investments in non-dollar denominated debt securities for the benefit of the Strategic Income Fund.

NASL Series Trust ("Series Trust")[4/] currently has thirteen portfolios. NASL Financial serves as investment adviser for each portfolio. SBAM Inc serves as sub-adviser to two portfolios, the U.S. Government Securities Fund and the Strategic Income Fund. In addition, SBAM Limited provides certain advisory services to SBAM Inc relating to currency transactions and investments in non-dollar denominated debt securities for the benefit of the Strategic Income Fund.

WNL Series Trust currently has eight portfolios. WNL Investment Advisory Services, Inc. serves as investment adviser for each portfolio. SBAM Inc serves as sub-adviser to the Salomon Brothers U.S. Government Securities Portfolio.

JNL Series Trust currently has thirteen portfolios. Jackson National Financial Services, Inc. serves as investment adviser for each portfolio. SBAM Inc serves as sub-adviser to two portfolios, the Salomon Brothers/JNL Global Bond Series and the Salomon Brothers/JNL U.S. Government & Quality Bond Series. In addition, SBAM Limited provides certain advisory services to SBAM Inc relating to currency transactions and investments in non-dollar denominated debt securities for the benefit of the Salomon Brothers/JNL Global Bond Series.

3/ The Commission granted exemptive relief under Section 17(b) of the 1940 Act to permit portfolios of NAF and Series Trust (defined below) to engage in principal transactions with securities dealers that might have been deemed to be second-tier or third-tier affiliated persons of those portfolios solely because of sub-advisory relationships with one or more of the Funds' other portfolios. See *North American Security Trust, et al.*, Investment Company Act Release No. 18860 (July 22, 1992) (notice) and Investment Company Act Release No. 18899 (August 18, 1992) (order).

4/ See footnote 2 above.

Salomon Advisers may serve as sub-advisers to other registered investment companies (or portfolios thereof) in the future which are expected to be structured in a manner similar to that described above for the Funds.

II. Legal Issues and Relief Sought

Section 17(a) of the 1940 Act, among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company any security or other property and from borrowing money or other property from such investment company.[5/]

Section 17(e) of the 1940 Act limits the ability of an affiliated person of a registered investment company, or any affiliated person of such person, to engage in brokerage and other agency transactions in connection with the purchase or sale of any property from or to such registered investment company.[6/]

[5/] Section 17(a) of the 1940 Act reads as follows:

It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3)(A) and (B)), or any affiliated person or such a person, promoter, or principal underwriter, acting as principal -

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer, (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof.

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer); or

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 21 (b).

[6/] Section 17(e) of the 1940 Act reads as follows:

(e) It shall be unlawful for an affiliated person of a registered investment company, or any affiliated person of such person -

(continued...)

Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" of another person as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percentum or more of the outstanding voting securities of such other person; (B) any person 5 percentum or more of whose outstanding voting securities are directly or indirectly owned by, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such person is an investment company, any investment adviser thereof. . . .

We request the Staff's concurrence that, for purposes of determining the affiliated persons, and the affiliated persons of such persons, to whom the prohibitions and limitations of Section 17 apply, each portfolio of a registered series investment company will be treated as if it were a separate registered investment company. This would be consistent with other similar positions the Staff has taken with respect to other provisions of the Act. See *e.g. North American Security Trust and NASL Series Trust,* (February 2, 1993), Investment Company Act Release No. 16431 (June 13, 1988) (amending Rule 17d-3) and Investment Company Act Release No. 11676 (March 10, 1981) (adopting Rule 17a-7). For purposes of the discussion in this letter, we will assume that each portfolio will be treated as if it were a separate registered investment company.

The Staff has indicated that each portfolio in a Fund may be deemed to be under common control with, and therefore an affiliated person of, each other portfolio in

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[6/](...continued)

> (1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or
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> (2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, or to receive from any source a commission, fee or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected on a securities exchange, or (b) 2 percentum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) 1 percentum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

that Fund because the Funds' officers and directors oversee the management and policies of the portfolios, and each sponsoring investment adviser serves as investment adviser to several or all portfolios in that Fund. Similarly, each portfolio in a Fund may be deemed to be under common control with, and therefore an affiliated person of, other registered investment companies having the same sponsoring investment adviser and/or the same or overlapping officers and directors.[7] *See, e.g., Dresdner Bank*, (Oct. 17, 1990) SEC No-Act, LEXIS 1180; *In the Matter of Chase Frontier Fund of Boston, Inc., Chase Capital Fund of Boston, Inc.*, Investment Company Act Release No. 6718 (Sept. 3, 1971); *In the Matter of Incorporated Investors, Incorporated Income Fund*, Investment Company Act Release No. 2330 (Mar. 29, 1956). Under clause (E) of the Section 2(a)(3) definition of "affiliated person" each sub-adviser of a Fund is an affiliated person of the portfolio or portfolios it advises.

Each sub-adviser of a Fund could, therefore, be deemed to be an affiliated person of an affiliated person ("second-tier affiliate") of that Fund's portfolios that it does not manage or of other investment companies which are deemed to be under common control with the portfolio for which it serves as sub-adviser. Each such sub-adviser, as an affiliated person of each portfolio it manages and as a second-tier affiliate of each other portfolio and investment company deemed to be under common control, is prohibited by Section 17(a) of the 1940 Act from engaging in principal transactions with such portfolios and investment companies and is limited by Section 17(e) of the 1940 Act in its ability to engage in brokerage and other agency transactions on behalf of such portfolios and investment companies. In addition, affiliated persons of each such sub-adviser are also prohibited or limited, as the case may be, from engaging in any such transaction for the portfolios managed by that sub-adviser.

The issue raised is whether Salomon and its affiliated investment advisers should be treated as a single entity for purposes of the affiliated person definition. This treatment would prevent Salomon from engaging in the proposed transactions described in this letter. The Staff has in certain instances treated a parent company and its wholly-owned subsidiary as a single entity. See Release No. IC-13920 (May 2, 1984), *Southwestern Investors, Inc.* (available June 13, 1971) and *Viking Growth Fund, Inc.* (available March 8, 1971). For the reasons set forth below, we do not believe Salomon should be "collapsed" with its affiliated investment advisers. We request confirmation that the Staff will not recommend enforcement action against Salomon should it engage

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[7] While we do not concede that the portfolios are under common control with other portfolios or investment companies as described above, we will assume, solely for the purposes of this request, the existence of such control relationship and consequent affiliation.

in principal and agency transactions with or on behalf of certain present and future registered investment companies (or portfolios thereof, in the case of a series registered investment company) of which a Salomon Adviser is a second-tier affiliate solely by reason of a sub-advisory relationship between a Salomon Adviser and (i) other portfolios of the same series registered investment company or (ii) another registered investment company (or portfolio thereof) that may be deemed to be under common control with the investment company or portfolio with which Salomon would engage in principal or agency transactions (the "Proposed Transactions").[8/]

Absent exemptive relief, Salomon will not engage in principal transactions with any registered investment company (or portfolio thereof) for which any Salomon Adviser serves as adviser or sub-adviser and will engage in agency transactions with such investment companies (or portfolios thereof) only to the extent permitted by Section 17(e) of the 1940 Act and Rule 17e-1 thereunder.

III. Legal Analysis and Conclusions

Sections 17(a) and 17(e) apply to certain transactions between a registered investment company and (i) affiliated persons of the investment company, and (ii) second-tier affiliates of the investment company. The statutory language of Section 17(a) places no restrictions on transactions engaged in by affiliated persons of affiliated persons of affiliated persons ("third-tier affiliates") of the investment company. The Salomon Advisers are affiliated persons of the portfolios they manage solely by reason of being a sub-adviser to the portfolios. It is our opinion that the Salomon Advisers do not control any of the portfolios of the Funds for which they act as sub-advisers. Our opinion is based upon, among other things, the fact that (i) neither Salomon Brothers Inc nor any Salomon Adviser has sponsored or organized the Funds, (ii) neither Salomon Brothers Inc nor any Salomon Adviser owns any shares issued by any Fund, (iii) the sub-advisory arrangements are generally terminable by the Fund and the shareholders, subject only to a notice requirement, (iv) no officer, director or employee of Salomon Brothers Inc, SBAM

[8/] Portfolios of series registered investment companies may purchase securities during the existence of an underwriting or selling syndicate where a principal underwriter in the offering is a sub-adviser, or an affiliated person of a sub-adviser, to another portfolio of the Fund so long as the principal underwriter is not (i) a sub-adviser of the purchasing portfolio or (ii) an affiliated person of the purchasing portfolio's sub-adviser, the sponsoring investment adviser or any officer, director, trustee or employee of the Fund, in reliance on the no-action relief granted in *North American Security Trust and NASL Series Trust*, (February 2, 1993,) SEC No-Act. LEXIS 195. Accordingly, we are not asking the Staff for no-action relief under Section 10(f) of the 1940 Act.

Inc or SBAM Limited or any other Salomon Adviser serves as an executive officer or director of any Fund and (v) neither Salomon nor any Salomon Adviser is an affiliated person of the sponsoring investment adviser to a Fund. Salomon is therefore neither an affiliated person nor a second-tier affiliate of the Fund portfolios that are not advised by a Salomon Adviser, or of any other investment companies that could be deemed to be under common control with portfolios advised by a Salomon Adviser. Accordingly, under a literal reading of Sections 17(a) and 17(e), we do not believe that Salomon is prohibited from engaging in the Proposed Transactions.

There are also policy reasons why the Staff should not extend the Section 17 prohibitions and limitations to third-tier affiliates by collapsing Salomon into the Salomon Advisers. The policy underlying Section 17 is to prevent self-dealing opportunities available when affiliates can direct a fund (or portfolio thereof) to engage in transactions. As the Commission stated in a recent release, "Section 17 was intended to protect investment company shareholders from loss in the value of their shares as a result of self-dealing by investment companies' insiders." Investment Company Act Release No. 17534 (June 15, 1990) (citation omitted). In each Proposed Transaction, the adviser or sub-adviser causing a portfolio to transact with Salomon would be unrelated to Salomon, and Salomon would not be in a position to cause the portfolio to trade with it. As a result, each Proposed Transaction would be the product of arms-length bargaining and would not raise the possibility of self-dealing that underlies Section 17.

Given that the Proposed Transactions do not raise self-dealing concerns, it would be contrary to the interests of the Funds' shareholders to prohibit them. By permitting the Proposed Transactions, the Staff would enlarge the universe of securities dealers with which the Funds' portfolios may transact, making it easier for the portfolios to achieve best price and execution. Prohibiting the Proposed Transactions would narrow this universe and potentially impair the ability to achieve best price and execution, resulting in potential harm to shareholders.

Recognizing the lack of policy concern underlying, and potential harm in prohibiting, transactions such as the Proposed Transactions, the Commission has in the past granted broad exemptive relief under Section 17(b) of the 1940 Act, to permit entities, that would be deemed second-tier affiliates solely because of a sub-advisory relationship with other portfolios of a registered investment company, to engage in transactions that would otherwise be prohibited by Section 17(a) of the Act. In *State Street Bank and Trust Company*, File No. 81-8310, Investment Company Act Release No. 19784 (October 13, 1993) (notice) and Investment Company Act Release No. 19844 (November 9, 1993) (order), the Commission granted an exemption from Section 17(a) of the 1940 Act to permit State Street Bank and Trust Company ("State Street") to engage

in principal transactions with (i) any series of an investment company of which State Street is a second-tier affiliate solely because of an investment advisory relationship with another series of that investment company and (ii) any investment company of which State Street is a second-tier affiliate solely because of an investment advisory relationship with another investment company under common control with that investment company. The Commission granted the exemption to State Street without imposing any conditions on the exempt transactions. See also *Goldman, Sachs & Co.*, File No. 812-8544, Investment Company Act Release No. 19709 (September 14, 1993) (notice) and Investment Company Act Release No. 19786 (October 13, 1993) (order), *The One Group and Goldman, Sachs & Co.*, File No. 812-8262, Investment Company Act Release No. 19410 (April 15, 1993) (notice) and Investment Company Act Release No. 19470 (May 11, 1993) (order), *North American Security Trust, et al.*, Investment Company Act Release No. 18860 (July 22, 1992) (notice) and Investment Company Act Release No. 18899 (August 18, 1992) (order) and *SunAmerica Series Trust, et al.*, File No. 812-8238, Investment Company Act Release No. 19513 (June 4, 1993) (notice) and Investment Company Act Release No. 19551 (July 1, 1993) (order).

Like the transactions that were granted this past exemptive relief, the Proposed Transactions do not raise the policy concerns underlying Section 17. The Proposed Transactions should accordingly be permitted.

Conclusions

Based on the facts, circumstances and representations described above, Salomon requests confirmation that the Staff will not recommend enforcement action against Salomon should it engage in the Proposed Transactions. In that connection, Salomon also requests the Staff's concurrence that, for purposes of determining the affiliated persons, and the affiliated persons of such persons, to whom the prohibitions and limitations of Section 17 apply, each portfolio of a registered series investment company will be treated as if it were a separate registered investment company.

For the convenience of the Staff, nine copies of this letter are enclosed. Please advise Gary S. Schpero of this firm (212-455-3665) of your determination in this matter. Also, please call Mr. Schpero collect with any questions you may have.

Very truly yours,

Simpson Thacher & Bartlett

SIMPSON THACHER & BARTLETT

PUBLIC

MAY 26 1995

Our Ref. No. 95-112-CC
Salomon Brothers Inc.
File No. 132-3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated April 25, 1995 requests our assurance that we would not recommend that the Commission take any enforcement action under Sections 17(a) or 17(e) of the Investment Company Act of 1940 ("1940 Act") if certain registered investment companies or portfolios thereof engage in principal and agency transactions with Salomon Brothers Inc ("Salomon"), a registered broker-dealer, as described in your letter.

Salomon is a wholly owned subsidiary of Salomon Brothers Holding Company Inc ("SBHC"). SBHC also wholly owns Salomon Brothers Asset Management Inc ("SBAM Inc") and Salomon Brothers Asset Management Limited ("SBAM Ltd"), which are registered investment advisers, as well as a number of other investment advisory entities (collectively, the "Salomon Advisers"). SBAM Inc and/or SBAM Ltd currently serve as sub-advisers to certain portfolios of six registered open-end series investment companies (the "Funds"). 1/ Each Fund has one or more investment advisers, and sub-advisers for other of its portfolios, none of which are affiliated persons either of Salomon or the Salomon Advisers. 2/ The sub-adviser is responsible for all investment decisions on behalf of a particular portfolio, and has full discretion over which brokers and dealers execute the portfolio's securities transactions.

Salomon proposes to engage in principal and agency transactions with portfolios of the Funds (and other investment companies and portfolios thereof under common control with the Funds) for which a Salomon Adviser does not serve as sub-adviser. Salomon also proposes to engage in these transactions with other registered investment companies or portfolios of which a Salomon Adviser becomes an affiliate in the future solely because it serves as sub-adviser to another registered investment company or portfolio that is under common control with such investment company or portfolio. The above-described transactions are referred to collectively below as the "Proposed Transactions."

Section 17(a) of the 1940 Act generally prohibits an affiliated person of a registered investment company (a "first-

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1/ The Funds are the Hercules Fund Inc., New England Zenith Fund, North American Funds, NASL Series Trust, WNL Series Trust, and JNL Series Trust.

2/ Under Section 2(a)(3) of the 1940 Act, an "affiliated person" of another person includes any person controlling, controlled by, or under common control with the other person, and, if such person is an investment company, any investment adviser thereof.

tier affiliate"), or an affiliated person of such person (a "second-tier affiliate"), acting as principal, from selling to or purchasing from the investment company any security or other property. Section 17(e) limits the ability of a first-tier or second-tier affiliate of an investment company to engage in brokerage and other agency transactions for the purchase or sale of any property on behalf of the investment company.

You request our concurrence that each portfolio of a Fund should be treated as a separately registered investment company for purposes of Sections 17(a) and 17(e). You argue that this treatment is consistent with Commission and staff positions under other provisions of the 1940 Act. For example, Rule 17a-7 specifically exempts from the prohibitions of Section 17(a) certain transactions between series of a single registered investment company. Similarly, the staff, on a number of occasions, has treated individual portfolios of a single registered investment company as separate investment companies under other provisions of the 1940 Act that expressly apply to a "registered investment company." 3/ Under the facts presented, we agree that each portfolio should be treated as a separate investment company for purposes of Section 17(a) and Section 17(e).

Because each portfolio of a series investment company has the same board of directors and, generally, the same investment adviser, you assume for purposes of this letter that the portfolios of each investment company will be under common control and therefore will be first-tier affiliates of each other. 4/ The Salomon Advisers, therefore, would be second-tier affiliates of portfolios of a Fund for which they do not act as sub-adviser. You contend that neither Section 17(a) nor Section 17(e) should prohibit the Proposed Transactions because Salomon, as an affiliate of the Salomon Advisers, is a third-tier

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3/ E.g., Scudder Investment Trust (pub. avail. Mar. 23, 1994) (each series of an investment company could file its own semi-annual report if the series have different fiscal years); North American Security Trust (pub. avail. Mar. 23, 1993) (each series treated as a separate registered investment company for purposes of Section 10(f)); PaineWebber Series Trust (pub. avail. Dec. 14, 1987) (diversification standards of Section 5(b)(1) applied to each series rather than on a company-wide basis). For an overview of the treatment of series companies under the 1940 Act, see Fleming, Regulation of Series Companies under the Investment Company Act of 1940, 44 Bus. Law. 1179 (1989).

4/ Section 2(a)(9) of the 1940 Act, in relevant part, defines "control" as the power to exercise a controlling influence over the management or policies of a company.

affiliate of these portfolios. Your argument is based on the premises that (1) the Salomon Advisers do not control the portfolios for which they act as sub-adviser; and (2) Salomon and the Salomon Advisers should not be treated as a single entity for purposes of Sections 17(a) and 17(e).

In support of your argument, you state that it is your view that a Salomon Adviser does not control the portfolios of the Funds for which it acts as sub-adviser. 5/ Your conclusion is based upon, among other things, the following facts: (1) neither Salomon nor any Salomon Adviser has sponsored or organized the Funds; (2) neither Salomon nor any Salomon Adviser owns any shares issued by any Fund; (3) the sub-advisory arrangements are generally terminable by the Fund or its shareholders, subject only to a notice requirement; (4) no officer, director or employee of Salomon or a Salomon Adviser currently serves as an executive officer or director of a Fund; 6/ and (5) neither Salomon nor any Salomon Adviser is an affiliated person of any Fund's investment adviser. 7/

Second, you argue that Salomon and the Salomon Advisers should not be treated as a single entity for purposes of Section 17(a) or 17(e). You note that the staff has, in certain instances, treated a parent company and its wholly-owned subsidiary as a single entity. 8/ You maintain, however, that

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5/ If a Salomon Adviser were deemed to control a portfolio for which it acted as sub-adviser, Salomon and that portfolio could be deemed to be under the common control of SBHC, making Salomon a first-tier affiliate of that portfolio, and a second-tier affiliate of the funds and portfolios that are under common control with the first portfolio.

6/ You state that an officer, director or employee of a Salomon Adviser in the future may serve as assistant secretary or assistant treasurer of a Fund to facilitate the execution of documents or the day-to-day management of a portfolio.

7/ Given the inherently factual nature of the inquiry, we express no view whether any Salomon Adviser controls any portfolio for which it acts as sub-adviser. See Fundtrust (pub. avail. May 26, 1987). We note that, given its limited role in the management of a Fund's operations, a sub-adviser would be less likely to control a Fund than its adviser.

8/ In Viking Growth Fund Inc. (Mar. 8, 1971), the staff declined to permit a director of the adviser's parent to engage in a principal transaction with the fund. Without analysis, the staff stated that the director was a direct affiliate of the adviser, thus apparently collapsing the adviser and its parent and treating the director as a

Salomon and any of the Salomon Advisers should not be treated as a single entity. Section 2(a)(3) specifically provides that companies under common control, such as Salomon and the Salomon Advisers, are first-tier affiliates of each other. Moreover, we agree that, under the circumstances presented, there do not appear to be any policy reasons that would require that Salomon and the Salomon Advisers be treated as a single entity. Section 17 was intended to prevent insiders from using an investment company to benefit themselves to the detriment of the company and its shareholders. 9/ You represent that, because Salomon will engage in the Proposed Transactions with funds and portfolios that are advised by persons not affiliated with Salomon or any Salomon Adviser, Salomon will not be in a position to cause these funds and portfolios to engage in the Proposed Transactions.

Accordingly, we would not recommend enforcement action under Sections 17(a) or 17(e) of the 1940 Act if Salomon engages in the Proposed Transactions. This position is based upon the representations made in your letter, particularly your view that a Salomon Adviser does not control the portfolios of the Funds for which it acts as sub-adviser. It should be noted that any different facts or representations might require a different conclusion.

Jana M. Cayne/ecf

Jana M. Cayne
Attorney

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second-tier affiliate of the fund. However, the staff could have reached the same result on the basis that the adviser's parent ultimately controlled the fund, rendering the director a second-tier affiliate of the fund.

9/ See Investment Company Act Rel. No. 17534 (June 15, 1990).