ACT — ICA
SECTION 17(a)
RULE 17a-8
PUBLIC AVAILABILITY 2/27/98

February 27, 1998
Our Ref. No. 98-64
Neuberger & Berman Income Funds, Neuberger & Berman Income Trust, and Neuberger & Berman Income Managers Trust

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

File Nos. 811-3802, 811-7724, and 811-7824

Your letter dated January 29, 1998 requests our assurance that we will not recommend enforcement action to the Commission under Section 17(a) of the Investment Company Act of 1940 (the "1940 Act") if, in reliance on Rule 17a-8 under the 1940 Act, one series of each of Neuberger & Berman Income Funds ("Income Funds") and Neuberger & Berman Income Trust ("Income Trust") transfers substantially all of its assets to another series of the same trust and then dissolves, as described in greater detail in your letter.

FACTS

Organization

Income Funds, Income Trust, and Income Managers Trust ("Managers Trust") each are registered with the Commission as diversified, open-end, management investment companies. Income Funds and Income Trust are Delaware business trusts, and Managers Trust is a New York common law trust. Each series of Income Funds and Income Trust is a feeder fund ("Fund") in a master-feeder fund structure. Each Fund invests all of its net investable assets in a corresponding portfolio ("Portfolio") of Managers Trust. Neuberger & Berman Management Incorporated ("N&B Management") serves as the investment manager of each Portfolio, as administrator of each Fund, and as distributor of the shares of each Fund. Neuberger & Berman, LLC ("Neuberger & Berman") serves as sub-adviser to each Portfolio. All of the voting stock of N&B Management is owned by principals of Neuberger & Berman.

Neuberger & Berman Limited Maturity Bond Fund ("Limited Maturity Fund") and Neuberger & Berman Ultra Short Bond Fund ("Ultra Short Fund") are series of Income Funds. Neuberger & Berman Limited Maturity Bond Trust ("Limited Maturity Trust") and Neuberger & Berman Ultra Short Bond Trust ("Ultra Short Trust") are series of Income Trust. Under the master-feeder fund structure, Ultra Short Fund and Ultra Short Trust each invests substantially all of its net investable assets in a corresponding portfolio of Managers Trust, known as Neuberger & Berman Ultra Short Bond Portfolio ("Ultra Short Portfolio"). Likewise, Limited Maturity Fund and Limited Maturity Trust each invests substantially all of its net investable assets in Neuberger & Berman Limited Maturity Bond Portfolio ("Limited Maturity Portfolio"), also a portfolio of Managers Trust.

The Proposed Transactions

On the closing date of the proposed transactions, Ultra Short Fund would be reorganized into Limited Maturity Fund and Ultra Short Trust would be reorganized into Limited Maturity Trust, using the procedures described in detail in your letter.[1] After the proposed transactions, Ultra Short Fund, Ultra Short Trust and Ultra Short Portfolio would each dissolve. You represent that, when the reorganizations are completed, each person who had held shares in Ultra Short Fund immediately before the reorganization would hold shares in Limited Maturity Fund of exactly the same total value, and each person who had held shares in Ultra Short Trust immediately before the reorganization would hold shares in Limited Maturity Trust of exactly the same total value. You also represent that pursuant to the terms of the trust instruments of Income Funds and Income Trust, and as permitted by Delaware business trust law, no shareholder vote is required to effect the proposed transactions, and no such vote will be obtained.

You state that the same individuals comprise the Boards of Trustees of Managers Trust, Income Funds and Income Trust; these entities also share common executive officers. You represent that the Boards of Trustees of Managers Trust, Income Funds and Income Trust (including all of the Trustees who are not interested persons of Managers Trust, Income Funds, or Income Trust) determined at a meeting that the proposed transactions were in the best interests of each of the Ultra Short and Limited Maturity series of Managers Trust, Income Funds, and Income Trust, and that the interests of shareholders or interest holders in the Ultra Short and Limited Maturity series of Managers Trust, Income Funds, and Income Trust would not be diluted as a result of the transactions. You also represent that the Boards' determinations, as well as the factors considered in reaching their conclusions, have been appropriately recorded in the minute books of Managers Trust, Income Funds and Income Trust.

5% Holders

You state that certain investors are record holders of 5% or more of the outstanding shares of both Funds to be involved in the proposed transactions. Specifically, a brokerage firm operating a "fund supermarket" currently holds, as record owner, more than 5% of the shares of each of Ultra Short Fund and Limited Maturity Fund, and a pension plan trustee currently

[1] The anticipated closing date of the proposed transactions is February 27, 1998.

holds, as record owner for various pension plans, more than 5% of the shares of each of Ultra Short Trust and Limited Maturity Trust. You represent that neither the brokerage firm nor the pension plan administrator is otherwise affiliated with the Funds. You represent that N&B Management is not aware of any person who, through the brokerage firm or pension plan administrator, beneficially owns 5% or more of the shares of more than one of the entities involved in the proposed transactions.

You also state that as of December 31, 1997, Neuberger & Berman Trust Company held, as trustee for the Neuberger & Berman Employees Profit Sharing Plan (the "Plan"), 5.4% of the shares of Limited Maturity Fund. Neuberger & Berman Trust Company is a wholly owned subsidiary of Neuberger & Berman. You represent that the financial interest in these shares is held by the Plan participants, and the largest individual interest amounts to less than 1% of Limited Maturity Fund. You further represent that plan investments are directed by individual participants, and that neither Neuberger & Berman nor any of its affiliated entities has any financial stake in the operation of the Plan.

DISCUSSION

Section 17(a) of the 1940 Act generally prohibits any affiliated person, or any affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company.[2] Under certain circumstances, Rule 17a-8 under the 1940 Act exempts from the prohibitions of Section 17(a) a merger, consolidation, or purchase or sale of substantially all of the assets involving registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors and/or common officers. Under Rule 17a-8, the board of directors of each affiliated registered investment company participating in the transaction, including a majority of the directors of each investment company who are not interested persons of any registered investment company participating in the

[2] Section 2(a)(3) of the 1940 Act provides, in relevant part, that "affiliated person" of another person means: any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; any person directly or indirectly controlling, controlled by, or under common control with, such other person; or, if such other person is an investment company, any investment adviser thereof.

transaction, must determine that (i) participation in the transaction is in the best interests of that investment company, and (ii) the interests of existing shareholders of that investment company will not be diluted as a result of the transaction. The findings, and the basis upon which the findings were made, must be recorded fully in the minute books of each investment company.

You state that each Fund may be deemed to be affiliated with the Fund into which it will reorganize because (i) the Funds share a common investment adviser and common trustees and officers, (ii) certain investors are holders of 5% or more of the outstanding shares of both of the participating Funds, or (iii) Neuberger & Berman Trust Company is a record holder of more than 5% of one of the participating Funds. You state that this share ownership may render a 5% holder an affiliate of each Fund whose shares it owns, which could result in each Fund being deemed an affiliate of an affiliate of the other Fund.[3]

You believe that the proposed transactions should be governed by Rule 17a-8, notwithstanding your assertion that the Funds may be deemed to be affiliated in ways other than those explicitly permitted under the Rule. You assert that the relief requested is consistent with past no-action relief granted by the staff in this area and the policies underlying Section 17(a) and Rule 17a-8.[4]

You represent that no entity that may be deemed to be affiliated with both Funds participating in a transaction has both the financial incentive and the ability to influence the

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[3] You note that Ultra Short Fund and Limited Maturity Fund also could be deemed to be affiliated, due to the master-feeder fund structure, if the series of Income Funds are viewed as separate entities, and Managers Trust is viewed as a single entity, in disregard of its separate series. That is, as a 5% owner of the outstanding interests of Managers Trust, each of Ultra Short Fund and Limited Maturity Fund could be deemed an affiliate of Managers Trust and, therefore, each Fund could be deemed an affiliate of an affiliate of the other Fund. You state, however, that this relationship arguably does not create an impermissible affiliation between those Funds if the series of Managers Trust are viewed as separate entities.

[4] In support of your assertion, you cite the staff's positions in The Eaton Vance Group of Investment Companies (pub. avail. July 25, 1997); Principle Preservation Portfolios, Inc., Prospect Hill Trust (pub. avail. Jan. 11, 1996); and Thomson McKinnon Global Trust (pub. avail. Dec. 18, 1986).

terms of the proposed transactions.[5] You represent that because no shareholder vote will be obtained to effect the proposed transactions, no 5% holder of the outstanding securities of the participating Funds has the ability, through its voting authority, to influence the terms of the proposed transactions. You further represent that no entity that may be considered affiliated with both of the Funds participating in the proposed transactions has an impermissible financial interest in the outcome of the transactions. You represent that each 5% holder is a mere record holder and thus cannot be said to have a financial stake in the proposed transactions through its shareholdings.

On the basis of the facts and representations described above and in your letter, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under Section 17(a) of the 1940 Act if, in reliance on Rule 17a-8, one series of each of Income Funds and Income Trust transfers substantially all of its assets to another series of the same trust and then dissolves, as described in your letter.[6] Our response is based particularly on your representations that (i) the Boards of each of Managers Trust, Income Funds, and Income Trust, including all of the Trustees who are not interested persons of Managers Trust, Income Funds, and Income Trust, have determined that participation in the proposed transactions is in the best interests of Managers Trust, Income Funds, and Income Trust, and that the interests of existing shareholders or interest holders of Managers Trust, Income Funds, and Income Trust will not be diluted as a result of the proposed transactions, (ii) the findings, and the basis upon which the findings were made, have been appropriately recorded in the minute books of Managers Trust, Income Funds, and Income Trust,

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[5] Telephone conversation between Alison M. Fuller and Arthur C. Delibert on February 24, 1998. In your letter, you note that in the release proposing Rule 17a-8, the Commission explained that, when the affiliation between two investment companies is based upon a person owning 5% or more of the outstanding securities of the investment companies, "the owner . . . would be presumed to have certain potential abilities to influence the terms of [the] transaction, in which . . . he may have a particular financial interest." Investment Company Act Release No. 10886 (Oct. 2, 1979).

[6] In agreeing not to recommend enforcement action, we analyzed the proposed transactions as if they were mergers of certain series of Income Funds, Income Trust, and Managers Trust. We have not considered, and express no view on, whether a feeder fund's in-kind purchase or redemption of shares of an affiliated master fund is within the scope of Section 17(a) of the 1940 Act.

and (iii) no entity that may be deemed to be affiliated with both Funds participating in a transaction has both the financial incentive and the ability to influence the terms of the proposed transactions.

This response expresses the staff's position on enforcement only and does not express any legal conclusion on the issues presented. Because this position is based on the facts and representations described above and in your letter, you should note that any different facts or representations might require a different conclusion.

Alison M. Fuller
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January 29, 1998

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

Ladies and Gentlemen:

We are writing on behalf of our clients, Neuberger & Berman Income Funds ("Income Funds") and Neuberger & Berman Income Trust ("Income Trust"), each a Delaware business trust registered as a diversified, open-end management investment company, and Income Managers Trust ("Managers Trust"), a New York common law trust registered as a diversified, open-end management investment company. We request that the Staff of the Securities and Exchange Commission confirm that it would not recommend enforcement action under Section 17(a) of the Investment Company Act of 1940, as amended ("1940 Act"), if one series of each of Income Funds and Income Trust transfers substantially all of its assets to another series of the same trust and then dissolves, as described below, in reliance on Rule 17a-8 under the 1940 Act.

I. Facts

Organization. Each series of Income Funds and Income Trust is a feeder fund ("Fund") in a master/feeder fund structure. Each Fund invests all of its net investable assets in a corresponding portfolio ("Portfolio") of Managers Trust, and each Portfolio invests in securities in accordance with an investment objective, policies, and limitations identical to those of its corresponding Funds. Neuberger & Berman Management Incorporated ("N&B Management") serves as the investment manager of each Portfolio, as administrator of each Fund, and as distributor of the shares of each Fund. Neuberger & Berman, LLC ("Neuberger & Berman") serves as sub-adviser to each Portfolio. All of the voting stock of N&B Management is owned by principals of Neuberger & Berman.

Neuberger & Berman Limited Maturity Bond Fund ("Limited Maturity Bond Fund") and Neuberger & Berman Ultra Short Bond Fund ("Ultra Short Bond Fund") are series of Income Funds. Neuberger & Berman Limited Maturity Bond Trust ("Limited Maturity Bond Trust") and

Neuberger & Berman Ultra Short Bond Trust ("Ultra Short Bond Trust") are series of Income Trust. Under the master/feeder fund structure, Ultra Short Bond Fund and Ultra Short Bond Trust each invests substantially all of its net investable assets in a corresponding portfolio of Managers Trust, known as Neuberger & Berman Ultra Short Bond Portfolio ("Ultra Short Bond Portfolio"). Likewise, Limited Maturity Bond Fund and Limited Maturity Bond Trust each invests substantially all of its net investable assets in Neuberger & Berman Limited Maturity Bond Portfolio ("Limited Maturity Bond Portfolio"), also a portfolio of Managers Trust.

As of December 31, 1997, Limited Maturity Bond Fund had approximately $252 million in assets, and Limited Maturity Bond Trust had approximately $41 million. Ultra Short Bond Fund had approximately $49 million in assets, and Ultra Short Bond Trust had approximately $11 million. Expense ratios for the fiscal year ended October 31, 1997 were 0.65% for Ultra Short Bond Fund, 0.70% for Limited Maturity Bond Fund, 0.75% for Ultra Short Bond Trust, and 0.80% for Limited Maturity Bond Trust.[1]

The same individuals comprise the Boards of Trustees of Managers Trust, Income Funds and Income Trust; these entities also share common executive officers. Daily pricing of each Fund's shares is done by State Street Bank & Trust Company, which serves as custodian and transfer agent for both the master and feeder funds, using prices provided by outside pricing services approved by Income Managers Trust's Board of Trustees.

Proposed Transaction. For simplicity, the following paragraph describes the reorganization of Ultra Short Bond Fund into Limited Maturity Bond Fund; simultaneously, Ultra Short Bond Trust would be reorganized into Limited Maturity Bond Trust, using an identical procedure. On the closing date, Ultra Short Bond Fund would exercise its right to withdraw its assets from Ultra Short Bond Portfolio. The Portfolio would distribute these assets in kind. Ultra Short Bond Fund would then transfer substantially all of these assets to Limited Maturity Bond Portfolio in exchange for an interest in Limited Maturity Bond Portfolio. Ultra Short Bond Fund would then contribute all of its assets (consisting essentially of its interest in Limited Maturity Portfolio) to Limited Maturity Bond Fund in exchange for shares of that Fund and that Fund's assumption of all of Ultra Short Bond Fund's liabilities. Ultra Short Bond Fund would then distribute to its shareholders the shares of Limited Maturity Bond Fund in exchange for the investors' shares of Ultra Short Bond Fund; and Ultra Short Bond Fund and Portfolio would be dissolved. The anticipated closing date of the transactions is February 27, 1998.

When the reorganizations are completed, each person who had held shares in Ultra Short Bond Fund immediately before the reorganization would hold shares in Limited Maturity Bond Fund of exactly the same total value, and each person who had held shares in Ultra Short Bond

[1] However, N&B Management has been reimbursing certain expenses for all of the Funds; the undertaking to do so is voluntary and may be terminated by N&B Management on 60 days' notice to the Fund.

Trust immediately before the reorganization would hold shares in Limited Maturity Bond Trust of exactly the same total value. The same method used to value each portfolio security before the transaction will also be used after the transaction. Whatever value is assigned to a security for purposes of distributing the assets of Ultra Short Bond Portfolio to its two feeder funds will, of course, also be used in the simultaneous transfer of that security by the feeder fund to Limited Maturity Bond Portfolio.

Board Consideration. The Boards of Trustees of Managers Trust, Income Funds and Income Trust (each a "participating investment company") (including all of those Trustees who are not "interested persons" of any participating investment company, as that term is defined in Section 2(a)(19) of the 1940 Act) determined at a meeting held on September 24, 1997 that the proposed transactions were in the best interests of both the Ultra Short Bond and the Limited Maturity Bond series of each participating investment company, and that the interests of shareholders or interest holders in the Ultra Short Bond and Limited Maturity Bond series of each participating investment company would not be diluted as a result of the transactions.

The Boards' determination was based on a number of factors, including the small asset base of Ultra Short Bond Portfolio and its failure to attract new assets, the fact that the reorganization would place investors' assets in another Neuberger & Berman Fund having the most nearly similar investment strategy with a minimum of administrative burden to shareholders, and that the proposed transactions would be tax-neutral to investors. The Boards also considered the compatibility of the different investment objectives and strategies of the Ultra Short Bond entities and the Limited Maturity Bond entities, as a result of which the portfolio resulting from the proposed transactions is not expected to require any significant restructuring. The Boards also considered the Funds' expense ratios, historical performance records and risk/return characteristics, and past growth in assets, as well as their future prospects.

The Boards also considered alternatives to the proposed transactions, including simple liquidation of the Ultra Short Bond entities and maintaining the status quo. The Board noted that the transactions would increase the assets held by each of the Limited Maturity Bond entities, bringing them closer to the level at which the expense ratio borne by each shareholder would be reduced. Finally, the Boards took note of the fact that N&B Management, as administrator of the Funds, had capped the expenses of each participating Fund, and would thus bear much of the cost of the reorganizations. The Boards' determination, as well as the factors considered in reaching its conclusions, have been appropriately recorded in the minute books of Managers Trust, Income Funds and Income Trust.

The costs associated with effecting the proposed transactions are not significant because a proxy solicitation and shareholder vote are not required to effect the transactions. The Trust Instruments of both Income Funds and Income Trust permit the proposed transactions to be effected without a shareholder vote, provided a majority of the Trustees determines that the continuation of the series is not in the best interests of that series or its shareholders due to factors

or events adversely affecting the ability of the series to conduct its business and operations in an "economically viable manner," which may include the inability of the series to maintain its assets at an appropriate size.[2] In addition, the Declaration of Trust of Managers Trust permits the Board of Trustees to dissolve a series of Managers Trust when there are no longer any interest holders in that series.

5% Holders. Certain investors are record holders of 5% or more of the outstanding shares of both of the Funds to be involved in the proposed asset sales. Specifically, a brokerage firm operating a "fund supermarket" currently holds, as record owner, more than 5% of the shares of each of Ultra Short Bond Fund and Limited Maturity Bond Fund, and a pension plan trustee likewise currently holds, as record owner for various pension plans, more than 5% of the shares of each of Ultra Short Bond Trust and Limited Maturity Bond Trust. Neither this brokerage firm nor the pension plan administrator is otherwise affiliated with the Funds. N&B Management is not aware of any beneficial owner through the brokerage firm or pension plan administrator who beneficially owns 5% or more of the shares of more than one of the entities involved.

As of December 31, 1997, Neuberger & Berman Trust Company held, as trustee for the Neuberger & Berman Employees Profit Sharing Plan (the "Plan"), 5.4% of the shares of Limited Maturity Bond Fund. (Neuberger & Berman Trust Company is a wholly-owned subsidiary of Neuberger & Berman.)[3] The financial interest in these shares is held by the Plan participants, and the largest individual interest amounts to less than 1% of Limited Maturity Bond Fund. Plan investments are directed by individual participants. Neither Neuberger & Berman nor any of its affiliated entities has any financial stake in the operation of the Plan.

II. Section 17(a) of the 1940 Act and Rule 17a-8 thereunder

Section 17(a) of the 1940 Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company. Congress adopted this Section to protect investment company shareholders by

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[2] Under the Delaware Business Trust Act, a Delaware business trust's governing instrument may provide for the sale of all the assets of a series of a business trust without a shareholder vote. Del. Code Ann. Title 12 § 3806(b)(3).

[3] The percentage held in the Fund by Neuberger & Berman Trust Company, on behalf of the Plan, may increase in the near future, with the distribution of year-end bonuses. In September 1997, when the Boards of the Trusts approved the proposed reorganization, the Plan held only 4.5% of Limited Maturity Bond Fund. In addition, as of December 31, 1997, Neuberger & Berman Trust Company held 0.41% of Limited Maturity Bond Fund on behalf another client, and Neuberger & Berman held, as record owner on behalf of its clients, 3.5% of the shares of Limited Maturity Bond Fund.

prohibiting a purchase or sale transaction when a party to the transaction has both the ability and a pecuniary incentive to influence the actions of the investment company. See Investment Company Act Release No. 10886 (October 2, 1979), citing Hearings on S.3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., 17 (1940) ("Release 10886").

Rule 17a-8 exempts from the Section 17(a) prohibition a purchase and sale of substantially all of the assets involving registered investment companies if they are affiliated solely by reason of having a common investment adviser, common directors and/or common officers, provided certain conditions are met. These conditions, as here relevant, are that the board of directors of each of the affiliated registered investment companies participating in the transaction, including a majority of the directors of each investment company who are not interested persons of either of the participating registered investment companies, determine (1) that participation in the transaction is in the best interest of that registered investment company; and (2) that the interest of existing shareholders of that investment company will not be diluted as a result of effecting the transaction. Rule 17a-8 is based on the rationale that "when a merger involves investment companies which are affiliated persons exclusively by virtue of sharing common officers, directors and/or an investment adviser, no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest in improperly influencing these terms." See Release 10886 at n. 9.

The Commission has indicated that if an affiliation exists due to a person's owning 5% or more of the outstanding voting securities of one or more investment companies involved in a reorganization, Rule 17a-8 may not apply. In such an instance, the owner may be presumed to have the ability to influence the transaction and a particular financial interest to do so. See Release 10886 at n. 9. However, as discussed more fully below, the Staff has granted no-action relief under Section 17(a) and Rule 17a-8 where neither such financial interest nor the ability to influence the terms of the transaction existed in fact. See The Eaton Vance Group of Investment Companies (pub. avail. July 25, 1997) ("Eaton Vance"); Principle Preservation Portfolios, Inc., Prospect Hill Trust (pub. avail. Jan. 11, 1996) ("Principle Preservation Portfolios"); and Thomson McKinnon Global Trust (pub. avail. Dec. 18, 1986) ("Thomson McKinnon").

While the participating Funds may be deemed affiliated because they share a common investment adviser and common trustees and officers, the Funds also may be considered affiliated because certain investors are holders of 5% or more of the outstanding shares of both of the participating Funds, or because Neuberger & Berman Trust Company is a record holder of more than 5% of the shares of one of the Funds. This share ownership may render the 5% holder an affiliate of the Fund in which it owns shares, which could result in each participating Fund being deemed an affiliate of an affiliate of the other.[4]

[4] Under Section 2(a)(3)(A) and (B) of the 1940 Act, a person who owns 5% or more of the outstanding shares of a mutual fund is an affiliated person of that fund, and vice versa.

Another possible source of prohibited affiliation is the master/feeder fund structure where each feeder fund invests all of its net investable assets in a corresponding master fund. Although Ultra Short Bond Fund and Limited Maturity Bond Fund invest in different series of Managers Trust, each of these Funds is a 5% owner of the outstanding interests of Managers Trust. Thus, Ultra Short Bond Fund and Limited Maturity Bond Fund may each be deemed an affiliate of Managers Trust, and therefore each may be deemed an affiliate of an affiliate of the other.[5]

For the reasons set forth below, we believe that the proposed transactions should nevertheless be governed by Rule 17a-8. Providing the relief requested herein would be consistent with past no-action relief granted by the Staff in this area and the policies underlying Section 17(a) and Rule 17a-8.

III. Discussion

A. Affiliation Due to Share Ownership

We believe the proposed reorganizations described above should be governed by Rule 17a-8 notwithstanding the fact that the Funds are affiliated in ways other than those permitted under the rule, because no entity that may be deemed affiliated with both Funds participating in a transaction has both the financial incentive and the ability through its voting power to influence the votes as to the proposed transactions. In Release 10886, the proposing release to Rule 17a-8, the Commission explained that "when the affiliation is based upon a person owning 5% or more of the outstanding securities [of the relevant entities] . . ., the owner . . . would be presumed to have certain potential abilities to influence the terms of the transaction, in which . . . he may have a particular financial interest." However, the Staff has granted no-action relief under Section 17(a) and Rule 17a-8 where neither such financial interest nor the ability to influence the terms of the transaction existed in fact. See Eaton Vance; Principle Preservation Portfolios; and Thomson McKinnon.

The policy concern articulated by the Commission in adopting Rule 17a-8 and as applied to the present facts is that a 5% holder of the participating Funds may utilize its voting authority to influence the terms of the transactions. Pursuant to the terms of the Trust Instruments of both Income Funds and Income Trust, however, no shareholder vote is required to effect the proposed transactions, and no such vote will be obtained. Thus, no 5% holder of the outstanding securities of the participating Funds has the ability through its voting authority to influence the terms of the proposed transactions, because there is simply no voting authority to exercise with respect to these transactions. As a result, an investor's voting authority is completely irrelevant to influencing the proposed transactions.

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[5] Neither Ultra Short Bond Trust nor Limited Maturity Bond Trust owns 5% or more of the outstanding interests of Managers Trust.

The Staff granted no-action relief under Section 17(a) in Eaton Vance under directly analogous facts. The Staff noted that the adviser's discretionary voting authority with respect to 5% or more of the shares of certain feeder funds participating in the reorganizations was irrelevant, because the transactions would be effected without a shareholder vote. Like the 5% holders in the present case, the adviser in Eaton Vance, therefore, did not have the ability to influence the terms of the reorganizations because no voting authority existed for it to exercise with respect to the proposed transactions.

Similarly, in Principle Preservation Portfolios and Thomson McKinnon, the Staff indicated that affiliations due to common share ownership do not necessarily preclude application of the exemption afforded by Rule 17a-8, even where a shareholder vote is required to effect the transactions, as long as the 5% holder does not have the ability to exercise its voting authority. In Principle Preservation Portfolios, the Staff granted no-action relief despite the fact that the adviser held discretionary voting authority with respect to 5% of the shares of the affected investment companies, because the adviser passed through such voting power to the account owners and thus exercised no voting authority with respect to those shares. Likewise, in Thomson McKinnon, the Staff apparently was influenced by the fact that the distributor, who was the nominal owner of more than 5% of the shares of the funds participating in the reorganization at issue, could vote those shares only in accordance with instructions from the beneficial owners and refrained from voting the shares where the beneficial owners did not provide voting instructions.

In addition to having no voting authority to influence the outcome of the proposed transactions, no entity that may be considered affiliated with both of the participating Funds has an impermissible financial interest in the outcome of the transactions. Each 5% holder is a mere record holder and thus cannot be said to have a financial stake in the proposed transactions through its shareholdings.

The brokerage firm operating the fund supermarket, which is the record owner of more than 5% of Ultra Short Bond Fund and Limited Maturity Bond Fund, has no financial interest in those shares. Rather, it merely holds the shares for its account holders, which are the true beneficial owners of the shares. The same is true of the pension plan trustee: it is merely the record owner of the shares, and has no financial interest in them. Likewise, Neuberger & Berman Trust Company, which currently holds just over 5% of the shares in Limited Maturity Bond Fund, has no financial interest in the proposed reorganizations, because it merely holds the shares as trustee for the Plan. As noted above, the financial interest in these shares is held by the Plan participants, and the largest individual interest amounts to less than 1% of Limited Maturity Bond Fund; Plan investments are directed by individual participants, and neither Neuberger & Berman nor any of its affiliated entities has any financial stake in the operation of the Plan.[6]

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[6] The facts of the present case are thus fundamentally different from those of New England Mutual Life Insurance Co. (pub. Avail. June 3, 1987). In that case, the staff declined to provide no-action assurance because beneficial ownership of more than 5% of one of funds involved

Thus, the concern expressed in Release 10886 by the Commission in proposing Rule 17a-8, namely, that a person owning 5% or more of the outstanding securities of the participating funds would be presumed to have the ability to influence the terms of the transaction in which he may have a particular financial interest, is simply not present under these circumstances. In granting no-action relief under Section 17(a), the Staff in Thomson McKinnon apparently accepted petitioner's argument that the distributor, which nominally owned 5% or more of the outstanding shares of the funds participating in the reorganization, had no pecuniary incentive to support or oppose the reorganizations, because the distributor was a mere owner of record rather than a beneficial owner.

We recognize that N&B Management, along with investors, may receive a benefit from the proposed transactions. Specifically, the combinations will eliminate the expense of maintaining Ultra Short Bond Fund, Trust and Portfolio as separate series (i.e., fund accounting, legal, audit, shareholder reporting, custodial expenses, etc.), producing economies of scale in the remaining Funds and making them more marketable, and eliminating the need for further expense reimbursements with respect to Ultra Short Bond Fund and Trust.

The Commission has concluded that such benefits are fully compatible with the use of Rule 17a-8. In proposing the Rule, the Commission expressly recognized that an investment adviser may enjoy economies of scale in serving a single merged or consolidated investment company.[7] The Commission did not conclude from this, however, that such a benefit to the adviser should cause Rule 17a-8 to be unavailable. Rather, it conditioned availability of the rule on the board of directors making determinations designed to ensure that the transaction is in the best interests of the investment company and its shareholders. Similarly, in granting no-action relief in Eaton Vance despite the fact that the reorganizations at issue might have resulted in the adviser receiving such benefits, the Staff apparently accepted that "the Adviser's interest in these reorganizations [was], as a practical matter, identical to its interest as a 'common adviser,' which is expressly permitted by Rule 17a-8," and that such mutual benefits to the adviser and the shareholders did not create the type of conflict that the legislature sought to address in adopting Section 17(a).[8]

(continued....)
rested with the insurance company that was the sponsor of both merging funds and co-issuer of their shares.

[7] Release 10886 at n.10. The Commission went on to acknowledge that "These economies may be particularly significant when the investment adviser would otherwise exceed particular expense limitation undertakings, resulting in diminished investment advisory fees or even the necessity to compensate the investment companies." Release 10886 at n. 10.

[8] See also Principal Preservation Portfolios. In addition, of course, no Neuberger & Berman entity will have any opportunity to exercise any voting authority in connection with the present transactions, as the Funds will not seek any shareholder vote. Thus, regardless of any benefit

B. Affiliation Due to Master/Feeder Structure

As mentioned above, another possible source of prohibited affiliation arises as a result of the master/feeder fund structure under which the feeder funds invest all of their net investable assets in separate series of the same master fund. Ultra Short Bond Fund and Limited Maturity Bond Fund each invests all of its net assets in a different series of Managers Trust; likewise, Ultra Short Bond Trust and Limited Maturity Bond Trust invest their respective net assets in the same two series of Managers Trust. As mentioned above, Ultra Short Bond Fund and Limited Maturity Bond Fund each holds more than 5% of the outstanding interests in Managers Trust.

Rule 17a-8, which of course was adopted prior to the development of the master/feeder structure, does not specifically address the affiliations that are inherent in such a structure. In addressing the implications of affiliations due to the master/feeder structure under Rule 17a-8, the Staff has indicated a willingness to permit transactions under Rule 17a-8 despite this type of affiliation. See Eaton Vance and Principle Preservation Portfolios. As explained below, we believe it is consistent with the Staff's previous no-action positions as well as the policies underlying Section 17(a) and Rule 17a-8 to permit the proposed transactions to go forward despite any possible affiliations due to the master/feeder structure of the participating Funds.

In Eaton Vance, the Staff explained that the concerns to which Section 17(a) and Rule 17a-8 are addressed were not implicated, despite any potential affiliation resulting from the master/feeder structure, because: (1) the reorganizations did not involve any shareholder vote; (2) the reorganizations did not involve the master funds; (3) the feeder funds had no ability to influence the terms of the reorganizations; and (4) the feeder funds had no particular financial interest in the reorganizations.[9] Each of the factors relied upon by the Staff in granting the no-action relief requested by Eaton Vance are present under the facts of the proposed transactions. First, as mentioned above, the proposed transactions do not require a vote of shareholders at either the master fund or feeder fund level.

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realized in accordance with the policies underlying Rule 17a-8, no party will have both the incentive and the ability to influence the terms of the proposed transactions.

[9] We note as a preliminary matter that there is arguably no impermissible affiliation under Section 17(a) with respect to each feeder fund's investments in its corresponding master fund. In the present case, two different series of Income Funds each owns more than 5% of Income Managers Trust; to find an impermissible affiliation, one has to consider the series of Income Funds as separate entities, but consider Income Managers Trust as a monolithic entity, in disregard of its separate series. In contrast, Eaton Vance and Principal Preservation Portfolios both involved reorganizations where each participating feeder fund owned in excess of 5% of the same series of a master fund. As a result, in those letters, both feeder funds may have been deemed affiliated with that series of the master fund and therefore affiliates of affiliates of one another.

Second, the master funds have little role to play in the reorganizations that is not in the ordinary course of their business. To effect the reorganizations, the Ultra Short feeder funds will withdraw their assets from Ultra Short Bond Portfolio and transfer those assets to Limited Maturity Bond Portfolio, which will in return issue interests in the Portfolio to those feeder funds. Thus, the only role of Ultra Short Bond Portfolio is to comply with its obligations under the 1940 Act, i.e., to honor the feeder funds' redemption orders[10]; and the only role of Limited Maturity Bond Portfolio is to issue interests in return for the assets transferred to it by the Ultra Short Bond feeder funds.[11]

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[10] The Board of Trustees of the master fund has determined that it would be in the best interests of Ultra Short Bond Portfolio, its interestholders and their shareholders to effect these redemptions in kind rather than in cash. The Board made this determination based on (1) the disruption to the Portfolio's investment program that would be caused by liquidation; (2) the transaction costs that would be involved in liquidation (and later replacement of the positions by Limited Maturity Bond Portfolio); (3) the potential market impact of liquidation; and (4) the potential tax consequences of liquidation.

[11] We recognize that a question may arise as to the propriety of Ultra Short Bond Portfolio effecting the redemptions in kind, rather than in cash. Viewed from a certain perspective, the Ultra Short Bond feeder funds may be deemed to be purchasing the assets held by the Portfolio and paying for these assets in kind, i.e., with the interests they hold in the Portfolio. Likewise, the Portfolio may be deemed to be selling its assets and receiving the Portfolio interests that were held by the Ultra Short Bond feeder funds as consideration. Viewed from this perspective, the proposed transactions may involve the purchase and sale of securities between affiliated investment companies in violation of Section 17(a).

It has been suggested that one Fund might obtain an advantage over the other if a security held by the master fund has an unrecognized long-term potential value not reflected in its current market price. Such an advantage would be impossible to acquire in the present transaction because in effecting the redemptions, Ultra Short Bond Portfolio will allocate each position between the two redeeming feeder funds as nearly as possible on a pro rata basis, except for certain appreciated positions that represent assets initially contributed to the Portfolio by Ultra Short Bond Fund (for tax reasons, these will be allocated entirely to that Fund; they represent less than 2/10th of one percent of the Portfolio). As noted above, the same method used to value each portfolio security for purposes of its withdrawal from Ultra Short Bond Portfolio will be used for purposes of its transfer to Limited Maturity Bond Portfolio.

We also do not believe there is any policy reason to apply Section 17(a) where the so-called "purchase" and "sale" are merely steps in a reorganization such as this one. Neither Ultra Short Bond Fund nor Ultra Short Bond Trust has any ability or incentive to gain any advantage over the other in the withdrawal of assets from the Portfolio. Immediately after the withdrawal, both of these feeder funds will transfer their assets to Limited Maturity Bond Portfolio in exchange for interests in that portfolio. Thus, to the extent a security held by Ultra Short Bond Portfolio may have some unrecognized long-term potential value not reflected in its current

Third, the feeder funds are not seeking to influence the terms of any merger in which the master fund would participate; rather, the feeder funds will simply withdraw their assets from one master fund and reinvest them in another. Finally, the feeder funds have no particular financial interest in the proposed transactions. Rather, the proposed transactions are expected to benefit the feeder fund shareholders by eliminating or reducing costs associated with maintaining two separate series and by increasing the size and, hence, the investment flexibility of the resulting Portfolio. For these reasons, any potential affiliation resulting from a feeder fund's ownership interest in the master fund clearly does not give rise to the concern expressed by the legislature in adopting Section 17(a) that an affiliated person having both the ability and the pecuniary incentive might influence the actions of investment companies involved in a reorganization.

* * *

In conclusion, we believe the proposed transactions are consistent with the policies underlying Section 17(a) and Rule 17a-8. There is no risk that an affiliated person possessing the financial incentive to influence the terms of the proposed transactions will have the voting authority to do so. We therefore ask that the staff confirm that it will not recommend enforcement action under Section 17(a) of the 1940 Act if the proposed transactions are implemented in reliance on Rule 17a-8, as described above.

Thank you in advance for your consideration of this request. If you have any questions or would like any additional information or documents, please call Arthur C. Delibert at (202) 778-9042 or Lori L. Schneider at (202) 778-9305.

Sincerely,

Arthur C. Delibert

Arthur C. Delibert

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market price, the investors in both feeder funds would share in that value following the reorganization, in the same proportion, relative to one another, as they would have if the reorganization had been effected by a simple merger of the Portfolios.

Finally, we do not believe the application of Section 17(a) to this situation is consistent with the Commission's long-standing approach to treat master and feeder funds as one combined entity. (See "Hub-and Spoke Funds: A Report Prepared by the Division of Investment Management," April 15, 1992, at p.3.) The use of Section 17(a) seems especially inappropriate where the master and feeder funds are under common sponsorship. In economic reality, such feeder funds are simply an alternative to the more common multiple class arrangement; that is, they are mere conduits for investor interests, and have no inherent economic interest of their own.