

[Redacted] [Redacted] [Redacted] [Redacted]

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This material may be subject to the confidentiality provisions of Section 10(b) of the Act which requires persons under the Act

Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Kaplan:

Subject: [Redacted]

APR 15 4 48 PM '68

ties for the account of unit trusts (or mutual funds), investment trust companies and private investors (collectively, the "Investors") for which the Managers

the power to purchase, sell and vote such securities. The question is whether or not, for purposes of the Act, the Managers may be deemed to "hold" within the meaning

because the Managers are deemed to control the Investors

with the voting power

[Redacted] company with a number of direct and indirect

[Redacted] and [Redacted] Holdings [Redacted] companies,

are in turn holding companies for a network of investment

3. Among its subsidiaries, [REDACTED] holds 100% of the outstanding voting securities issued by each of [REDACTED] and [REDACTED] ([REDACTED]), both of which are [REDACTED] companies.

4. Among its subsidiaries, [REDACTED] holds 100% of the outstanding voting securities issued by [REDACTED] company and 100% of the outstanding voting securities issued by [REDACTED]

5. Under 16 CFR §801.1(a)(1), [REDACTED] together with all entities which it controls directly or indirectly, constitute a single "person" for purposes of the Act. Because [REDACTED] holds, either directly or indirectly through its wholly-owned subsidiaries, 50% or more of the outstanding voting securities issued by [REDACTED] "controls" each of such entities within the meaning of 16 CFR §801.1(b). Therefore, [REDACTED] is the "ultimate parent entity" of a single "person" which includes each of the controlled entities named above and all other entities which are controlled by [REDACTED] (hereinafter referred to as the [REDACTED]). As of December 31, 1985 [REDACTED] and its subsidiaries (prior to

approximately \$234,000,000 and annual turnover of approximately \$723,000,000 (figures are converted from pounds sterling at approximately the current rate)

6. Within the [REDACTED] [REDACTED] are all Managers of voting securities owned by Investors. [REDACTED] [REDACTED] further solely or holding companies [REDACTED]

British equivalent of mutual funds); (ii) a manager of an investment company and (iii) a holding company. ~~functions variously as: (i) a holding company;~~
(ii) an investment management company for certain investment trust companies and for unit trusts;
~~(iii) an investment management company for individual and corporate accounts who have accounts over which~~
over which ~~exercises~~ exercises investment discretion ("discretionary accounts"); (iv) an investment management company for other individual and corporate accounts over which ~~does not~~ does not exercise investment discretion ("non-discretionary accounts"); and (v) an investment advisory company for investment management companies.

7. Under 16 CFR §801.1(c)(8), if the investment management and advisory functions of the ~~Investor~~ were deemed to constitute "control" over any ~~Investor~~ such Investor would be treated as a member ~~of the~~ of the ~~Investor~~ which would be treated as holding any voting securities which are held by that Investor. In our opinion, the

8. Even if the ~~Investor~~ does not "control" an Investor, the ~~Investor~~ will be treated as holder securities owned by that Investor as a member of ~~Investor~~ ownership" of such securities within the meaning of 16 CFR §801.1 (c)(1) or if any of the special provisions

operates to change this result. Because the relationships between the members of the ~~Investor~~ and

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9. As stated above, [redacted] function

[redacted] both of which are unit trusts organized under the laws of England. Power to direct the activities

manage each unit trust's assets is held by its Manager, while each Trustee has a vote power over the Manager's

sells investments owned by [redacted] and [redacted] on behalf of those unit trusts and [redacted] votes any voting securities

carried out by [redacted] behalf of the unit trusts.

10. Under 16 CFR §801.1 (b), [redacted] could be

[redacted] either holds 50% of the outstanding voting

11. "Voting securities" are defined under 16 CFR §801.1 (f)(1) as "any securities which at [redacted] thereof to vote for the election of directors of the [redacted] with respect to unincorporated entities.

defined. Both [redacted] have issued units which have some voting powers; in terms of choosing manage-

[redacted] to remove the Trustee

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have no voting power in [redacted] hands with respect to maintaining its own tenure of management.

have the contractual power to designate a majority of the Directors (or individuals exercising similar functions)

designate the trustee or, if there is more than one, a majority of the trustees." As Manager of [redacted]

retire. [redacted] has no power to remove the trustee. On the other hand, the Trustee, under both unit trusts' deeds, does have the power to remove [redacted] as Manager if for good and sufficient reason the Trustee is of the opinion that a change of Manager is desirable in the interests of the Unit Holders; provided, that if the [redacted] is dissatisfied with such opinion, the matter

be binding on both parties. As stated above, the Manager can also be removed by majority vote of the [redacted]

under the unit trust deeds does not amount to control over the unit trusts because, on balance, [redacted] is in the weaker position in any conflict over management

Trustee or a majority of the Unit Holders can remove [redacted]

control [redacted], and that these unit trusts are not member entities of the [redacted] Group. ✓

13. Turning to the issues raised in paragraph 8
it is noted that [redacted] should not be deemed

because [redacted] is not the "beneficial owner" of such securities within the meaning of 16 CFR §801.1(c)(1). Furthermore, [redacted] are not "collective invest-

[redacted] is neither a bank nor a trust company; consequently, [redacted] should not be treated under the special provision of 16 CFR §801.1(c)(6) as holding assets or [redacted] either [redacted]

14. 16 CFR §801.1(c) defines the term "hold" to mean "beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means." As Investment Manager, [redacted] has the [redacted] control of all

of investment securities in the names of [redacted] and the power to vote any securities owned by [redacted] and [redacted]. For purposes of the United States Securities Exchange Act of 1934 (the "Exchange Act"), these powers are sufficient to cause [redacted] to be deemed the "beneficial owner" of securities owned by [redacted] (SEC

Trade Commission and the Department of Justice have not

power over securities. At date 03470, the Federal Reserve

value, the right to vote the stock or to determine who may vote the stock, the investment discretion (including the power to dispose of the stock)." [redacted] has no right to receive any increase in value or dividends from securities it manages on behalf of [redacted] nor does [redacted] bear any risk of loss or decrease in value of such

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securities. In our opinion, MBUTM is not, therefore, a
"beneficial owner" ✓

under the general rule stated in 16 CFR §801.1(c)(3), most trusts are treated as holding exclusively any assets or securities which constitute trust corpus, while most trustees are not treated as holding such assets or securities.

16. There are three exceptions to 16 CFR §801.1(c)(3): (1) revocable trusts; (2) trusts in which the settlor has retained a reversionary interest;

assets. Because [redacted] is not a settlor of [redacted]

trusts shall hold all assets and voting securities constituting the corpus of each such fund." Although [redacted] could accurately be described as funds in which individual investors buy interests or units

trusts held by a national bank as trustee, and interests collectively: "(1) In a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian or custodian under a uniform gifts to minors act." or "(2) In a fund consisting solely of assets

of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code." [redacted] and [redacted] do not fall within the specialized classification of funds defined by 12 CFR §9.18(a), nor does [redacted] all within the classification of a national bank or trust company acting as a fiduciary. Where the Federal Trade Commission, in drafting 16 CFR §801.1(c)(3), has explicitly defined the term "collective investment fund" by reference to a section of the Federal banking regulations, it is our opinion that only the technical meaning of that term was intended to be used, and not a broader interpretation. Since [redacted] does not fit the technical

voting securities under 16 CFR §801.1(c)(6).

18. Like [redacted] functions as an Investment Manager for a unit trust, [redacted]. As Manager, [redacted] status in relation to [redacted] and its Trustee and trust assets is substantially similar to [redacted] status in relation to [redacted] which is discussed above at paragraphs 9-17. Therefore, in our opinion [redacted] is not

19. [redacted] functions as an Investment Manager for

to that of [redacted] in relation to [redacted] which is discussed above at paragraphs 9-17, it is our opinion that [redacted] is not the holder of any assets or voting

20. As stated above, [redacted] has several different functions: (i) a holding company; (ii) an investment management company for certain investment trust companies and for one unit trust; (iii) an investment management

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company for individual and corporate customers who have accounts with [redacted] over which [redacted] exercises investment discretion ("discretionary accounts"); (iv) an investment management company for other individual and corporate accounts over which [redacted] does not exercise investment

investment advisory company for investment management companies.

under written management agreements with three publicly-

the holders of the voting shares issued by [redacted] and [redacted] respectively.

23. Under the management agreement between [redacted] and [redacted] has delegated to [redacted] subject to the direction and supervision of [redacted] board of directors, broad executive powers in relation to handling [redacted] investments, including the power to act for [redacted] to exercise the functions, duties, powers and discretions exercisable by the directors of [redacted] to manage the investment and

ment agreements with [redacted] confer less extensive management powers than the agreement between [redacted] but [redacted] powers under the [redacted] contracts do include the buying and selling of investments and the execution of such other stock transactions, including the exercise of such discretions in connection therewith as the

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Although [redacted] exercises broad powers under its management

[redacted] any of [redacted] individual management decisions can be overruled by intervention of the boards of directors, and each of [redacted] contracts as manager of [redacted] can be terminated entirely with one year's notice in each case.

24. Under 16 CFR §801.1(b), [redacted] would be treated

[redacted] of such companies, or if [redacted] a contractual power presently to designate a majority of the directors of

[redacted] 16 CFR §801.1(b) does not include any provision for a broader interpretation of the term "control", and the Statement of Basis and Purpose, *op. cit.* at page 33457, indicates that a previous draft of section 801.1(b), which attempted to identify "actual or working control, however effected," was rejected partly in response to comments asserting that the proposed test, as applied to mutual funds, would have [redacted] as [redacted] [redacted] that [redacted] [redacted]

[redacted] determine their obligations with reasonable certainty based on objective criteria." Also, according to its authors, the final form of the regulation "eliminated the criticism in the comments on the mutual fund issue." *Ibid.*, at page 33458. It would appear that the authors of 16 CFR §801.1(b) intended that working management powers such as those exercised by [redacted] on behalf of [redacted] [redacted] should not be considered in determining whether or not one entity has "control" over another,

and such a determination should be made exclusively on the basis of the objective criteria of voting control or a contractual power to designate the directors. Since the objective criteria of 16 CFR §801.1(b) are not satisfied in this instance, it is our opinion that

of the [redacted] for purposes of the Act.

25. In our opinion, [redacted] should not be deemed to "hold" voting securities owned by [redacted] and [redacted] which [redacted] manages on behalf of those companies, because [redacted] is not the "beneficial owner" of such voting securities within the meaning of 16 CFR §801.1(c)(1). [redacted] has no rights to receive any increase in value or dividends from such securities, nor does [redacted] bear any risk of loss of value from the investment decisions. As discussed

to buy, sell and vote securities in [redacted] discretion are not equivalent to "beneficial ownership" as that term is used in 16 CFR §801.1(c).

26. [redacted] functions as investment manager for [redacted], a pension unit trust organized under the laws of [redacted]. [redacted] position as investment manager of [redacted] is somewhat different from the position of [redacted] in relation to the unit trusts managed by them. Under [redacted] Trust Deed, the principal power to manage the unit trust's assets is held by a trust Committee, while the Trustee has a veto power over the Committee's management decisions. The Committee of [redacted] is bound by

appointed [redacted] as investment manager. As investment Manager, [redacted] determines how the assets of [redacted] will be

owned by [redacted] has authority to sign contracts and other documents which are legally binding upon [redacted]

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above in the discussion relating to [REDACTED] a trust can be controlled by another entity only if the latter has a contractual power, under the trust indenture, to designate the trustee or, if there is more than one, a majority of the trustees. [REDACTED] has no such contractual right nor any other means of controlling the election, appointment or replacement of the Trustee or the Committee.

[REDACTED] have "control" over [REDACTED] within the meaning of 16 CFR §801.1(b), and it follows that [REDACTED] is not a member entity of the [REDACTED]. ✓

opinion, [REDACTED] is not the "holder" for purposes of the Act of assets or voting securities owned by [REDACTED] for the same reasons as those set out in paragraphs 14-17 above in relation to [REDACTED]. ✓

28. [REDACTED] also serves as an investment manager to a variety of individuals and corporate clients who have established investment portfolio accounts with [REDACTED]. As a service to some of its account clients, [REDACTED] exercises investment discretionary powers over such accounts, including the power to purchase and dispose of securities.

[REDACTED] to receive any increase in value or dividends from any [REDACTED].

[REDACTED] for the same reasons set out in paragraphs 14-17 above in relation to [REDACTED].

SECURITIES HELD IN ITS CLIENTS' DISCRETIONARY ACCOUNTS, and [REDACTED] is not the "holder" of such assets or voting securities for purposes of the Act. ✓

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of a stockbroker who holds stock in "street name" for the account of a natural person. With respect to non-discretionary accounts, [redacted] merely purchases and sells securities through stock exchange members and acts as

30. [redacted] acts as an investment advisor to several investment management companies, including [redacted] and [redacted], a [redacted] corporation which manages [redacted] a unit trust organized under the laws of

provides investment advice to [redacted] but does not have

Agreement does not empower [redacted] to exercise investment discretionary powers on [redacted] behalf. [redacted] and [redacted] have informally authorized [redacted] to exercise such powers, including purchases, dispositions and voting of securities owned by [redacted]. This informal authorization could be revoked at any time, and, in practice, [redacted] seeks specific instructions from [redacted] with respect to all significant purchases, dispositions and votes of securities owned by [redacted]. As investment advisor, [redacted] has no right to receive dividends or proceeds of sales of voting securities. In our opinion, [redacted] authority to buy, sell and vote securities owned by [redacted] only for so long as authorized by [redacted] does not constitute "beneficial ownership" of such securities.

[redacted] act the "holder" for purposes of the Act of

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The terms of the Advisory Agreement between [REDACTED] are substantially similar to those of the [REDACTED] Advisory Agreement. Therefore, in our opinion, [REDACTED] is not the "holder" of assets and voting securities managed by GFM for the same reasons set out in paragraph 30 above in the discussion relating to the [REDACTED]

but this relationship has not been formalized by a written agreement. The relationship is, in practice, [REDACTED]

33. Confirmation of the legal points raised above

curities issued by United States companies which the

per cent (5%) of the voting securities of United States issuers, and, because their holdings are aggregated for Exchange Act purposes, the [REDACTED] and the investors under its management have been required to file with the SEC statements on Schedule 13D with [REDACTED]

aggregate investment in certain companies has reached levels which are close to the \$15 million and 15% ownership reporting thresholds under the Act, and those thresholds may be surpassed in the future. It is therefore important that our clients are informed whether or not they will be subject to the Act's requirements.

35. In our brief telephone conversation, you indicated to me that you did not think the investment

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management companies would be required to aggregate the holdings of funds or clients under management with their

discussed, and as indicated in this letter, the

with your concurrence, would best enable our clients to determine with reasonable certainty their obligations under the Act. Please confirm whether or not you agree with the general opinions expressed in paragraphs 7 and 8 above, as well as the specific opinions expressed in paragraphs 11, 12, 13, 14, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31 and 32, on the basis of the facts presented.

16 In the event that this letter or your response

Sincerely,

[Redacted signature]

[Redacted text]

On 6/2/01 [Redacted] to distribute his conclusions.

and that [Redacted] and future transactions. He will send in a [Redacted]

W. C. [Redacted]