

10-2

June 17, 2010

Re: _____ – Voting Shares Held by _____

Dear _____:

This responds to your letters of April 12, and May 25, 2010, regarding the issue of whether the voting shares of a California state chartered bank held by various _____ should be aggregated for purposes of determining whether the Funds control the bank in accordance with Financial Code Section 700, et seq. It is your position that the holdings of each _____ should not be aggregated since each _____ is individually responsible for determining how the bank shares should be voted, whether the shares are voted directly or by proxy.

For the reasons set forth in your letters, including the sample voting guidelines enclosed with your May 25th letter, we agree with your position. Accordingly, the Department of Financial Institutions (the "Department") will not aggregate the stock holdings of the various _____ in any one California state chartered bank for purposes of determining whether _____ controls that bank.

Please understand that the decision reflected in this letter is based solely on the representations contained in your letters. Any change in the facts may change the result reached by the Department.

If you have any questions regarding this matter, please feel free to contact me at (916) 322-1570.

Very truly yours,

KENNETH SAYRE-PETERSON
Acting General Counsel

KSP:pjp

April 12, 2010

Confidential Treatment Requested

VIA ELECTRONIC MAIL

Mr. Kenneth Sayre-Peterson
Assistant General Counsel
California Department of Financial Institutions
1810 -13th Street
Sacramento, CA 95811-7118

Re: _____ -- Rebuttal of Control

Dear Mr. Sayre-Peterson:

On behalf of our client _____ ("_____"), we seek to rebut the presumption under the California Financial Code that _____ controls a California state-chartered bank (a "Bank") if _____'s aggregate indirect holdings, as described more fully below, in the Bank equal or exceed 10% of the voting securities of such Bank. Bank holding company and bank shares are held by a variety of customer accounts and investment funds (collectively, "funds and accounts") that are advised by affiliates of _____ and _____ and its affiliates ("_____") and together with the affiliates of _____, the "_____").

_____ 's beneficial ownership of securities held by funds and accounts advised by _____ currently equals approximately 10.048% of the voting securities of _____ ("_____").¹ As this letter will explain, _____ believes that it has not acquired control of _____ for purposes of the California Financial Code. Accordingly, _____ requests confirmation that it may rebut the presumption of control that arose due to _____'s interest reaching and exceeding 10% of the voting securities of _____ and that it will not be necessary to file an application for approval to acquire control with the California Department of Financial Institutions (the "DFI") under the California Financial Code with respect to its beneficial ownership of _____ securities.

I. Factual Background

_____ *Structure*

The _____ provide investment advice and discretionary investment management services to various funds and accounts, including a family of mutual funds (the "_____") that are managed by _____ ("_____"), a direct wholly owned subsidiary of _____. Generally, each _____ represents a separate portfolio of investment

¹ _____ controls _____, a California state-chartered member bank headquartered in _____, California.

securities and is organized as a series of a Massachusetts business trust or Delaware statutory trust. Certain of these trusts have a single portfolio, in which case the trust issues a single class or series of shares of beneficial interest to its shareholders and registers with the Securities and Exchange Commission (the "SEC") as an investment company under the Investment Company Act of 1940, as amended (the "Investment Company Act"). To achieve administrative efficiencies, the other trusts have two or more distinct portfolios of investment securities that are separately managed. Each portfolio is registered with the SEC as an investment company, and the trust issues a distinct class or series of shares of beneficial interest for it. Each portfolio has its own shareholders who can elect to reinvest or redeem their holdings in a given portfolio without affecting other portfolios held within the same or other trusts. Each trust has its own legally separate board of trustees, although for many _____ the boards of trustees consist of the same individuals. At least a majority of the board of trustees of each trust is comprised of individuals who are independent of _____ and the _____ for purposes of the Investment Company Act.

Each of the _____ has own investment objectives and its own investment policies. The uniqueness of each _____'s objectives and policies means that investments appropriate for one _____ may not be appropriate for another, and investment decisions are made on a fund by fund basis. Moreover, each _____ is marketed to investors on the basis of a specified investment strategy which is predicated upon its acting as a passive investor. If a portfolio investment ceases to be consistent with this investment objective and policy, then the _____'s policy would lead to consideration of liquidating the investment and redeploying the proceeds in other investments consistent with such _____'s objective and policies. In such a case, the _____ would not seek to influence the portfolio company's management to adopt a different business plan. In other words, the _____ are in the business of picking stocks, not shaping business plans.

The voting of portfolio securities by the _____ is subject to written guidelines ("Voting Guidelines") adopted by the _____' boards of trustees. _____, as investment adviser to the _____, carries out the voting of the _____' shares of portfolio companies in connection with regular or special meetings of the shareholders of such companies in accordance with the Voting Guidelines. The Voting Guidelines are predicated on the basic principle that the _____' portfolio holdings are acquired and held for passive investment purposes, not for the purpose of exercising control over the operations or management of a portfolio company. At the same time, the Voting Guidelines seek to vindicate the interests of the _____ as investors by, for example, protecting the voting rights of common stockholders.

Furthermore, _____ has regularly asserted in filings submitted with the SEC on Schedule 130 under the Securities Exchange Act of 1934 (the "1934 Act") that it does not

influence or control, nor intend to influence or control, the policies or management of _____ and that, to the extent that beneficial ownership of _____ shares may be attributed to _____, it arises solely in the context of passive investment activities by the _____ and other accounts advised by the _____.

_____ *Investment*

On December 31, 2009 _____ had, as a result of investment holdings across 29 different funds and accounts advised by the _____, indirect beneficial ownership of 4,027,644 of the 41,010,528 _____ common shares outstanding, or 9.821% of the total _____ common shares outstanding.²

On March 15, 2010, _____'s indirect beneficial ownership percentage increased to 10.048% due to the inadvertent exclusion of an individual fund's holdings from the aggregate ownership compliance monitoring system in connection with a systems modification. This incorrectly created the appearance on the compliance system that additional _____ common shares could be purchased while still remaining below the existing 10% limit. _____ funds and accounts purchased 24,085 additional shares on March 15, 2010. The largest holding of any single fund or account is 1,741,010 _____ common shares, or 4.208% of the total _____ common shares outstanding. _____ believes that, given the aggregate holdings of _____ common shares by _____ funds and accounts, it currently has the largest single beneficial ownership interest of outstanding _____ common shares.

_____, through its control of _____, may be deemed to have sale power to dispose of the 4,140,639 _____ common shares owned by the _____. _____ ("_____"), an indirect wholly-owned subsidiary of _____, is the beneficial owner of 16,370 _____ common shares in its capacity as investment adviser to institutional accounts holding the shares. _____, through its control of _____, may be deemed to have sole dispositive power over 16,370 _____ common shares and sole power to vote or to direct the voting of 12,860 _____ common shares. _____, a qualified institution that is separate from _____ but in which _____, Chairman of _____, and certain members of his family hold an ownership interest, is not the beneficial owner of any _____ common shares.³

² _____ filed with the SEC a schedule I3G dated February 12, 2010 concerning its ownership of _____ shares pursuant to Rule 13d-1(b) under the 1934 Act.

³ _____ and _____ are separate and independent corporate entities, and their Boards of Directors are generally composed of different individuals. _____ and _____ are of the view that they are not acting as a "group" for purposes of Section 13(d) of the 1934 Act and that they are not otherwise required to attribute to each other the "beneficial ownership" of securities "beneficially owned" by the other corporation within the meaning of Rule 13d-3 promulgated under the 1934 Act. Therefore, they are of the view that the shares held by the other corporation need not be aggregated for purposes of Section 13(d). However, _____ regularly makes securities filings on a voluntary basis as if all of the shares are beneficially owned by _____ and _____ on a joint basis.

II. Legal Background

For purposes of the California Financial Code, a person controls a bank if it possesses, directly or indirectly, the power to (i) vote 25% or more of any class of the voting securities issued by the bank, or (ii) direct or cause the direction of the management and policies of a bank, whether through the ownership of voting securities, by contract or otherwise.⁴ In addition, there is also a rebuttable presumption of control if an acquiring person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies representing, 10% or more (but less than 25%) of any of the then outstanding voting securities issued by a bank.⁵ Pursuant to the California Financial Code, any person, whether acting directly or indirectly, must file an application with the DFI before acquiring control of a bank.⁶

III. Analysis

Rebuttal of Control Regarding _____

As indicated by _____'s filings with the SEC under the 1934 Act, the _____ acquired all _____ shares on behalf of the funds and accounts in the ordinary course of their investment management business, with neither the purpose nor with the effect of changing or influencing the control of _____, nor in connection with or as a participant in any transaction having such purpose or effect. The funds' and accounts' investment in _____ is not a proprietary investment by _____ or the _____. Rather, it is an investment made in a fiduciary capacity on behalf of the beneficial owners of customer accounts, and client funds are used to purchase the shares to make the investment. Moreover, investments are made with the expectation of holding for an appreciable return and eventual resale and are not made for the purpose of exercising a controlling influence over the management or policies of a bank. The funds and accounts are not operating companies, and _____ and the _____ do not lend to the funds and accounts they advise or the portfolio companies owned by such funds and accounts.

Furthermore, each of the _____ acts in accordance with its own investment objectives and cannot be deemed to be acting in concert with other _____. None of the _____ individually own or control, nor will they own or control, 10% or more of any class of voting securities of a bank. In addition, _____ commits that the _____ will use best efforts, consistent with their applicable fiduciary duties, to cause shares owned or controlled by _____ funds and accounts (not including certain institutional accounts that have

⁴ Cal. Fin. Code § 700(b).

⁵ *Id.*

⁶ Cal. Fin. Code § 701.

not delegated voting discretion to any _____) equal to or in excess of 10% to be voted in the same proportion as all other shares are voted or, alternatively, not to be voted. Thus, _____ does not believe that the factual circumstances surrounding its indirect beneficial ownership of _____ securities trigger the presumption described above.

We would like to emphasize that _____ inadvertently reached and exceeded the 10% beneficial ownership threshold of _____. _____ has been observing and monitoring this limitation on bank share investments. For example, _____ uses a global reporting tool that, on a daily basis, tracks holdings in individual securities by _____ and its affiliates and rigorously checks the securities against lists of bank holding companies and banks. Securities are given an industry type based on the Standard Industrial Classification (SIC) codes. Based on these classifications, a security is restricted at a predetermined percentage below an applicable regulatory or other ownership restriction and an application or notification process is started if required. The security is completely frozen upon reaching the percentage immediately below the ownership restriction until such notification or prior approval is complete. _____ has an additional vendor product that helps it identify banking entities otherwise hidden within a corporate structure.

_____ is also willing to enter into certain commitments with the DFI that are generally indicative of a lack of control. Specifically, _____ is willing to commit to the DFI as follows:⁷

1. _____ will not acquire, directly or indirectly, shares of any class or series of _____'s voting securities that would result in _____'s aggregate ownership percentage of such securities to exceed its ownership percentage as of the date hereof (10.048%);
2. _____ will use best efforts to vote shares equal to or in excess of 10% of any class or series of _____'s voting securities ("excess _____ shares") in the same proportion as all other shares are voted, and if such efforts fail, will not vote any excess _____ shares;
3. _____ will not take any action that would cause _____ or any of its subsidiaries to become its subsidiary for purposes of the Bank Holding Company Act;
4. _____ will not accept, have or seek any director, officer, agent or employee interlocks with _____ or its subsidiaries;
5. _____ will not propose a director or a slate of directors in opposition to any nominee or slate of nominees proposed by the management or board of directors of _____;

⁷ _____'s proposed passivity commitments to the DFI are substantially similar to passivity commitments of _____ to the Board of Governors of the Federal Reserve System contained in a relief letter discussed below in the "Standing Relief" section.

6. Except in the context of a tender offer or in certain other limited transactions, _____ will not dispose of _____ voting shares (i) to any person whom _____ knows is seeking control over _____, (ii) to any person whom _____ knows has made an SEC filing with respect to the ownership of more than 5% of _____'s voting securities or would be required to make such a filing as a result of the purchase of _____ shares from _____, or (iii) in block transactions exceeding 5% of any class of _____ voting securities;
7. _____ will not threaten to dispose of voting securities in any manner as a condition of specific action or non-action by _____;
8. Neither _____ nor any single subsidiary of _____ will individually own, control, or hold with power to vote 10% or more of any class of _____ voting securities; and
9. _____ will not take any action to control the management or policies of _____.

In order to provide for the above-listed commitments of _____, we are attaching as Exhibit A to this letter a draft passivity agreement between _____ and the DFI with respect to _____'s indirect holdings of _____ securities.

Standing Relief

As a separate matter (outside of the timeframe of the processing of the rebuttal request in connection with the specific investment in _____ discussed in this letter), _____ would also like to raise with you whether, in order to avoid the need for future rebuttal letters and discussions with the DFI, the DFI would consider accepting generic commitments similar to the above-listed commitments from _____ with respect to other passive investments. The result would be to provide a standing rebuttal of control, similar to that provided pursuant to the relief letter of the Board of Governors of the Federal Reserve System (the "FRB") discussed below, and allow _____ to hold a beneficial interest, directly or indirectly, of up to 15% of any class of voting securities of any California state-chartered bank (including, for the avoidance of doubt, _____). Such relief would be subject to the continued validity of the factual representations made by _____ in this letter and to _____'s compliance with the above-listed commitments.

In a letter dated April 18, 2000 (and from which the above-listed commitments are drawn), the FRB has allowed _____ to acquire beneficial ownership up to 15% of any class of voting securities of a bank holding company (or indirectly of a state member bank) without being deemed to have acquired control of that institution under the Bank Holding Company Act or the Change in Bank Control Act. Pursuant to the FRB's letter attached hereto as Exhibit B (the "FRB Letter"), _____ committed to:

- (i) not acquire, directly or indirectly, an aggregate of more than 15% of any class or series of voting securities of any bank;
- (ii) use best efforts to vote shares in excess of 10% of any class or series of voting securities of a bank ("excess shares") in the same proportion as all other shares are voted, and if such efforts fail, not to vote any excess shares;
- (iii) not take any action that would cause a bank or any of its subsidiaries to become its subsidiary for purposes of the Bank Holding Company Act;
- (iv) not accept, have or seek any director, officer, agent or employee interlocks with the bank or its subsidiaries;
- (v) not propose a director or a slate of directors in opposition to any nominee or slate of nominees proposed by the management or board of directors of any bank;
- (vi) except in the context of a tender offer or in certain other limited transactions, not dispose of voting shares of the bank (a) to any person whom _____ knows is seeking control over the bank, (b) to any person whom _____ knows has made an SEC filing with respect to the ownership of more than 5% of the bank's voting securities or would be required to make such a filing as a result of the purchase of bank shares from _____, or (c) in block transactions exceeding 5% of any class of voting securities of the bank;
- (vii) not threaten to dispose of voting securities in any manner as a condition of specific action or non-action by the bank;
- (viii) not individually own, or permit any single of its subsidiaries to individually own, control, or hold with power to vote more than 10% of any class of voting securities of the bank; and
- (ix) not take any action to control the management or policies of the bank.

The FRB has recently reaffirmed the acceptability of the commitments contained in the FRB Letter in connection with a pending transaction.

* * *

_____ respectfully requests on behalf of itself and its affiliates that all information contained in this letter and in the referenced documents (together, the "Confidential Material")

be maintained in confidence and exempt from disclosure by the DFI and its staff. Accordingly, this letter and referenced documents have been marked "Confidential Treatment Requested."

The Confidential Material concerns the conduct of _____'s business, is proprietary and maintained in confidence by _____. The Confidential Material also concerns or may concern customarily sensitive, non-public, confidential and privileged business and commercial information concerning _____ and/or its affiliates. Release of the Confidential Material to the public, including _____'s competitors, could provide competitors with knowledge of _____'s business, financial plans and activities, and result in substantial harm to its competitive position and damage the business of _____ and/or its affiliates.

The Confidential Material is exempt from disclosure under various provisions of the California Public Records Act, codified at Cal. Govt. Code §§ 6250 - 6270. Accordingly, this Confidential Material is submitted to the DFI with our request that it be kept in a non-public file and that only DFI staff have access to it. If any person not a member of the DFI's staff (including, without limitation, any governmental employee) should request an opportunity to inspect or copy the Confidential Material, or if any member of the DFI's staff contemplates disclosure of the Confidential Material to any other person, _____ requests that the undersigned immediately be notified of such request, be furnished a copy of all written materials pertaining to such request (including but not limited to the request itself) and be given advance notice of any intended disclosure so that _____ may, if deemed necessary or appropriate, request that such information not be disclosed and pursue any available remedies.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts or other writings of any sort whatsoever that are made by, or at the request of, any employee of the DFI (or any other governmental agency) and which (i) incorporate, include or relate to any of the Confidential Material, or (ii) refer to any conference, meeting or telephone conversation between _____, its current or former employees, representatives, agents, auditors or counsel on the one hand and employees of the DFI (or any other government agency) on the other, relating to the Confidential Material. Because release of the Confidential Material would be damaging to its business and/or that of its affiliates, _____ requests that the DFI maintain the Confidential Material in confidence indefinitely.

If the DFI or its staff determines to transfer any of the Confidential Material to another governmental agency, we request that you forward a copy of this letter to any such agency with the Confidential Material. If the DFI is not satisfied that the Confidential Material is exempt from disclosure, we stand ready to supply further particulars and request a hearing on the claim of exemption.

* * *

In conclusion, _____ believes that the representations and factual circumstances set forth in this letter, along with the proposed passivity agreement, should support a determination by the DFI that _____ has not acquired control of _____. Accordingly, _____ does not believe that it has an obligation to file a control application with the DFI pursuant to the California Financial Code.

Please do not hesitate to contact me, or my colleague _____ at _____, if you have any questions about this letter, the FRB Letter or the draft passivity agreement, or about our request for confidential treatment.

Sincerely,

EXHIBIT A

Draft Passivity Agreement

See attached.

Confidential Treatment Requested

PASSIVITY AGREEMENT

By and between

_____ and _____

The California Department of Financial Institutions

This Passivity Agreement (this "Agreement") is entered into as of April __, 2010 by and between the California Department of Financial Institutions (the "DFI") and _____, a Delaware limited liability company ("_____"). _____'s principal office is in _____.

WHEREAS, generally, no person may acquire control, directly or indirectly, of a California state-chartered bank unless the DFI first approves such acquisition of control;

WHEREAS, generally, pursuant to the California Financial Code, any person acting directly or indirectly, who acquires control of a parent company of a California state-chartered bank, and is not excepted from the requirements of the California Financial Code, is assumed to have acquired indirect control of such bank;

WHEREAS, _____ (the "Parent Company"), controls _____, a California state-chartered member bank headquartered in _____, California (the "Bank");

WHEREAS, the Parent Company is registered under Section 12 of the Securities Exchange Act of 1934;

WHEREAS, from time to time and in the ordinary course of business, voting securities of the Parent Company may be acquired and held, exclusively for investment purposes, by various investment companies (the "_____") registered with the Securities and Exchange Commission (the "SEC") under the Investment Company Act of 1940 (the "1940 Act") and other institutional client accounts (the "Accounts") that are advised by direct and indirect subsidiaries of _____ or by _____ and its direct or indirect subsidiaries;

WHEREAS, _____, on behalf of the _____ and the Accounts, will not acquire shares of any class or series of voting securities of the Parent Company or the Bank that would result in _____'s aggregate ownership percentage of such securities to exceed its aggregate ownership percentage as of the date hereof (10.048 percent);

WHEREAS, absent this Agreement, the DFI could consider that _____ has acquired indirect control of the Bank with respect to any acquisition resulting in its ownership, control, or holding with power to vote at least 10 percent, in the aggregate, of any class of voting securities of the Parent Company and would be required to file a control application under the California Financial Code; and

WHEREAS, in order to show that _____ does not indirectly control the Bank, _____ has offered to make the commitments and representations contained in this Agreement.

NOW THEREFORE, it is agreed between _____, through its duly authorized representative, and the DFI, through its duly authorized representative, that _____ shall enter into, and at all times operate in compliance with, the articles of this Agreement.

ARTICLE I PASSIVITY

- (1) _____ commits that it will not, directly or indirectly:
- (a) Acquire securities that would cause the aggregate ownership of _____ and its affiliates to exceed their aggregate ownership percentage as of the date hereof (10.048 percent) of any class of voting securities of the Parent Company;
 - (b) Take any action that would cause _____ or any of its subsidiaries to become its subsidiary for purposes of the Bank Holding Company Act;
 - (c) Have or seek to have any representative serve on the board of directors of the Parent Company or the Bank (the "Boards"), or to nominate any candidate to serve on the Boards or otherwise seek representation on the Boards;
 - (d) Have or seek to have any employee or representative serve as an officer, agent or employee of the Parent Company or the Bank;
 - (e) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by management of the Parent Company or the Bank, or the Boards;
 - (f) Threaten to dispose of securities of the Parent Company in any manner as a condition of specific action or non-action by the Parent Company or the Bank; or
 - (g) Take any action to control the management decisions or policies of the Parent Company or the Bank.
- (2) _____ commits that:
- (a) The acquisition of any securities equal to or in excess of 10 percent of a class of voting securities of the Parent Company is exclusively for investment purposes;
 - (b) It will use best efforts to:
 - (i) grant the Parent Company a proxy ("Proxy") to vote shares equal to or in excess of 10 percent of each class of voting securities of the Parent

Company owned in total by _____, any subsidiary of _____, and any _____ or any Account over which any of them, respectively, exercise voting discretion, and instruct the Parent Company that the securities covered by such Proxy will be voted in the same proportion as all other securities voted by all other shareholders; or, alternatively,

(ii) cause the securities over which _____, any subsidiary of _____, any _____ or any Account, respectively, exercise voting discretion equal to or in excess of 10 percent of each class of voting securities of the Parent Company not to be voted.

(c) None of _____, any subsidiary of _____, any _____ or any Account will individually own, control or hold with power to vote 10 percent or more of any class of voting securities of the Parent Company.

(3) _____ commits that none of _____, any subsidiary of _____, any _____ or any Account will dispose of voting securities of the Parent Company:

(a) to any person if _____ or any of its subsidiaries knows that such person seeks to change the control of the Bank in any manner;

(b) to any person whom _____ or any of its subsidiaries knows (i) has made a filing with the SEC or other federal agency with respect to the ownership of more than 5 percent of the Parent Company's voting securities or (ii) would be required to do so as a result of the purchase from _____, its subsidiary, a _____ or an Account; or

(c) in an amount of more than 5 percent of the Parent Company's voting securities in any single transaction;

provided that notwithstanding paragraphs (a) through (c) above, the _____ and Accounts may dispose of their Parent Company stock in the following circumstances:

(i) in a cross trade between two or more _____ or Accounts in compliance with the rules governing such cross trades under the 1940 Act;

(ii) in the case of paragraph (c) above, in a bunched trade effected for two or more _____ or Accounts in compliance with the rules governing bunched trades under the 1940 Act;

(iii) in a sale by a _____ or Account to the Parent Company or one of its subsidiaries;

(iv) in a tender or exchange offer for voting stock of the Parent Company; or

- (v) in one or more open market transactions effected on a stock exchange or in the over-the-counter market (which may include a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the shares sold to it or them in accordance with its or their normal business practices).

(4) _____ represents and warrants that it has full power and the authority to execute this Agreement, and that this Agreement is binding and enforceable.

(5) Before deviating from any of the foregoing commitments, _____ will either file a control application pursuant to the California Financial Code or obtain a written opinion from the DFI that such an application is not required.

(6) If _____ complies with the commitments and other provisions of this Agreement, and if the representations made herein by _____ are, and remain, true and correct, the DFI will not determine that _____ has acquired control of the Parent Company or the Bank through the acquisition of voting shares of the Parent Company when such acquisition would result in _____, its affiliates, and their respective officers, directors, and employees, owning, controlling, or holding with power to vote, in the aggregate, 10.048 percent or less of any class of voting shares of the Parent Company.

ARTICLE II

EFFECTIVENESS OF AGREEMENT

(1) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to this Agreement, or are excepted, waived or terminated in writing by the DFI.

(2) If its holdings of any class of voting securities in the Parent Company fall below 10 percent, but thereafter again equal or exceed 10 percent, but remain equal to or less than 10.048 percent, _____ will be subject to this Agreement immediately.

ARTICLE III

GENERAL PROVISIONS

- (1) The following terms have the meanings indicated.
 - (a) The term "affiliate" means any company that controls, is controlled by, or is under common control with, another company.
 - (b) The term "control" has the meaning given it in Section 700(b) of the California Financial Code.
 - (c) The term "subsidiary" means any company that is directly or indirectly controlled by another company.

(2) _____ acknowledges that the failure to comply with any provision of this Agreement, the inaccuracy of any representation, or the violation of any warranty made herein may be viewed as a violation of the California Financial Code.

(3) All notices, reports, or other communications required hereunder shall be in writing and shall be made by facsimile transmission, with a copy sent by certified mail, return receipt requested, addressed as follows:

If to DFI:

Mr. Kenneth Sayre-Peterson
Assistant General Counsel
California Department of Financial Institutions
1810 -13th Street Sacramento, CA 95811-7118

If to _____

Such notice or communication shall be deemed to have been given or made as of the date that the notice or communication was delivered to the certified mail carrier.

(4) This Agreement and the rights and obligations hereunder shall be governed by, and construed in accordance with, the laws of the State of California.

(5) The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated above.

**CALIFORNIA DEPARTMENT
OF FINANCIAL INSTITUTIONS**

By: _____
Name:
Title

By: _____
Name:
Title

EXHIBIT B

FRB Letter

See attached.

Confidential Treatment Requested

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

April 18, 2000

Dear Mr. _____:

This is in response to your request for a determination that _____, _____ ("_____") may acquire up to fifteen percent of any class of voting securities of a bank holding company or bank without being deemed to have acquired control of that institution under the Bank Holding Company Act ("BHC Act") or the Change in Bank Control Act ("CIBC Act") when the acquisition complies with certain conditions described in this letter and related correspondence.¹

_____ holds bank holding company and bank shares in a variety of customer accounts (the "Accounts") and investment funds (the "Funds") that are managed by _____ and its affiliates, _____ ("_____") and _____ ("_____"). The Funds include mutual funds registered under the Investment Company Act of 1940.

_____ is the parent of _____, a limited purpose trust company organized under the laws of Massachusetts. Amendment to the BHC Act enacted in the Competitive Equality Banking Act of 1987 ("CEBA") provide that a company, such as _____, that controls a "nonbank bank," such as _____, may retain ownership of its nonbank bank without being considered a bank holding company under the BHC Act if,

¹ You also have requested specific confirmation that _____ does not control _____, Detroit, Michigan ("_____"), a bank holding company under the BHC Act, and is not required to file with the Board a notice under the CIBC Act regarding _____.

among other things, that company does not acquire more than five percent of the shares of any additional bank or savings association.²

Section 4(f) of the BHC Act specifically provides that shares of an additional bank or savings association held as a "bona fide fiduciary" do not count toward the CEBA limit.³ The House Conference Report accompanying CEBA provides that the bona fide fiduciary exemption in section 4(f)(2)(A)(ii) "is intended to cover situations in which . . . an SEC-registered diversified investment company within the meaning of Section 5(b)(1) of the Investment Company Act of 1940 managed by an investment adviser affiliated with a company makes passive investments in the ordinary course of business and thereby does not acquire 'control' as determined under the Bank Holding Company Act or the Change in Bank Control Act."⁴

The issue raised by your request is whether acquisitions of bank holding company or bank shares under specific circumstances by the Funds and the Accounts would qualify for the exemption in section 4(f) for shares held as a bona fide fiduciary. If so, these shares would not be subject to the 5 percent limit imposed by CEBA on companies such as _____ that control a nonbank bank.

For purposes of the BHC Act, a company controls a bank holding company or bank if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote more than 25 percent of any class of voting securities of the bank holding company or bank; (ii) controls in any manner the election of a majority of the directors of the bank holding company or bank; or (iii) directly or indirectly exercises a controlling influence over the policies or management of the bank holding company or bank.⁵ Regulation Y also sets forth a set of rebuttable presumptions of control.⁶ Under the proposal, _____ and its affiliates would not own control, or hold with power to vote more than 25 percent of a class of voting securities of, or control the election of a majority of the directors of, a bank holding company or bank (other than _____). In addition, _____ and its

² 12 U.S.C. § 1843(f).

³ 12 U.S.C. § 1843(f)(2)(A)(ii)(I).

⁴ See House Conf. Rep. 261, 100th Cong., 1st Sess. 124, reprinted in 1987 United States Code Cong. and Admin. News 588, 593.

⁵ 12 U.S.C. § 1841(a)(2); 12 C.F.R. § 225.2(e).

⁶ 12 C.F.R. § 225.31(d).

affiliates would not trigger any of the rebuttable presumptions of control under Regulation Y with respect to any bank holding company or bank (other than _____). _____ would only be deemed to control a bank holding company or bank if the Board were to find that _____ and its affiliates exercise a controlling influence over the policies or management of the bank holding company or bank.

For purposes of the CIBC Act, _____ is presumed by the Board's regulations to control a bank holding company or state member bank if "immediately after the transaction . . . [it] will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution" and the institution has registered securities or no other person owns or controls a greater percentage of the same class of voting securities.⁷ As noted above, _____ proposes at times to acquire in excess of 10 percent of the shares of a bank holding company or state member bank through the Funds and the Accounts, without regard to whether any such institution has registered securities or whether _____ and its affiliates are the largest shareholder in the institution.

_____ seeks to rebut the regulatory presumption of control for purposes of the CIBC Act and to establish to the Board that _____ does not exercise a controlling influence over a bank holding company or bank for purposes of the BHC Act. In particular, _____ has proposed that _____, its subsidiaries, the Funds, and the Accounts collectively not acquire more than 15 percent of any class of voting securities of a bank holding company or bank; and that none of _____, any subsidiary of _____, any Fund or any Account individually acquire more than 10 percent of any class of voting securities of a bank holding company or bank. In addition, _____ has committed that it will use its best efforts to enter into arrangements with bank holding companies and banks to vote _____-related shareholdings in excess of ten percent ("excess shares") in the same proportion as all other shares are voted, and, in the event that _____ is unable to enter into such arrangements, _____ will not vote any excess shares. Moreover, _____ has committed that, whenever the Funds and the Accounts own or control, in the aggregate, more than 10 percent of any class of voting securities of a bank holding company or bank, the Funds, the Accounts, _____ and any subsidiary of _____ will not individually or collectively:

- 1) take any action to control the bank holding company or bank;

⁷ 12 C.F.R. § 225.41(c).

- 2) have any director, officer, or employee interlocks with the bank holding company or bank;
- 3) except in the context of a tender offer or in certain other transactions, dispose of voting shares of the bank holding company or bank (i) to any person seeking control over the institution or (ii) in block transactions exceeding 5 percent of any class of voting shares of the institution; or
- 4) threaten to dispose of voting shares in any manner as a condition of specific action or non-action by the bank holding company or bank.⁸

In addition to considering these commitments, Board staff has considered the nature of _____ and its proposed investments. _____ and its affiliates operate and provide investment advice to a family of investment funds and fiduciary accounts, and the proposed acquisitions would not be proprietary investments by _____. Rather, they would be investments made by the Funds and on behalf of the beneficial owners of the Accounts. The Funds and the Accounts are not operating companies, and _____ and its affiliates do not lend to the mutual funds that they advise or the portfolio companies of the mutual funds. Moreover, the acquisitions are made for investment purposes with the expectation of resale and are not made for the purpose of exercising a controlling influence over the management or policies of a bank holding company or bank.

In view of the commitments made by _____ and the fact that the acquisitions described in this letter would be made through the Funds and the Accounts and not on behalf of _____, Board staff would not recommend that the Board find that the acquisitions would cause _____ to control a bank holding company or bank for purposes of the BHC Act. Similarly, staff would not recommend that the Board find that the acquisitions described in this letter would cause _____ to control a bank holding company or state member bank for purposes of the CIB Act.⁹

⁸ For a complete list of the commitments that _____ has made to the Board, see the Appendix:

⁹ These general rules also would apply to investments in _____ by _____, its subsidiaries, the Funds, and the Accounts. Staff understands that _____ holds certain _____ shares in a fiduciary capacity and does not have the sole authority to vote such shares. Under section 2(a)(5) of the BHC Act and sections 225.12(a) and 225.42(a)(4) of Regulation Y, these shares held as a fiduciary are not included in calculating _____'s aggregate holdings of _____ shares for purposes of determining whether notice to the Board is required under the BHC Act or the CIBC Act. See 12 U.S.C. § 1841(a)(5); 12 C.F.R. §§ 225.12(a) and 225.42(a)(4).

The preceding opinions are based expressly on the facts and circumstances of this case as they have been described to Board staff, and any change in these facts or circumstances may result in a different opinion. In particular, the legislative history of CEBA provides that the bona fide fiduciary exemption is available only with respect to passive investments that do not result in the acquiring company obtaining control of a bank or savings association for purposes of the BHC Act or CIBC Act.¹⁰ Accordingly, the bona fide fiduciary exemption in section 4(f)(2)(A)(ii) of the BHC Act would not be available if _____, directly or indirectly acquires control of a bank or savings association within the meaning of the BHC Act or CIBC Act.¹¹ In addition, this letter expresses no opinion as to whether a CIBC Act notice would be required for transactions involving direct investments in national banks or state non-member banks.

Sincerely,

¹⁰ See 12 C.F.R. §§ 225.2(e), 225.31(d)(2), and 225.41(c).

¹¹ See House Conf. Rep., supra note 3 ("Interlocking officer, director, or employee relationships between the . . . investment adviser and its affiliates, and the bank or insured institution in which the passive investment is made, would not be permitted.")

APPENDIX

Commitments of _____ to the Board

Investments by the _____¹² and Managed Accounts¹³ in ten percent or more of any class of voting securities of U.S. bank holding companies and banks (each, a "Bank") will be conducted in accordance with the commitments and restrictions listed below.

1. _____ the subsidiaries of _____, the _____, and the Managed Accounts, in the aggregate,
 - (a) will not acquire more than fifteen percent of any class or series of voting securities of any Bank; and
 - (b) will use best efforts to provide that shares in excess of ten percent of any class or series of voting securities of a Bank ("excess shares") will be voted in proportion to the vote taken on all shares that are not excess shares or, in the event that such efforts to provide for mirror voting are not successful, will not vote any excess shares.
2. None of _____ any subsidiary of _____, the _____, or the Managed Accounts will, directly or indirectly individually or in the aggregate:
 - (a) take any action to cause a Bank or any of its subsidiaries to become a subsidiary of a _____ or _____ for purposes of the BHC Act;

¹² "_____" means investment companies managed by _____ or its affiliates.

¹³ "Managed Accounts" means (i) offshore investment funds sponsored by _____, a _____-based investment management firm owned by certain of its employees and by members of the _____; (ii) Canadian investment funds sponsored by _____, a _____-based investment management firm which is a subsidiary of _____; (iii) the Advisor World Fund, offshore funds managed by _____ which are offered to non-residents; (iv) other offshore investment funds for which _____ serves as investment manager; (v) various trust accounts maintained by _____; and (vi) any other customer account or investment fund if _____ or any of its subsidiaries exercises sole discretionary voting power over securities in the account or fund.

(b) unless agreed to by the Federal Reserve Board or its staff, and permitted by applicable law, seek or accept representation on the board of directors of any Bank or its subsidiaries;

(c) have or seek to have any representative of _____, its subsidiaries, or the _____ serve as an officer, agent or employee of any Bank or its subsidiaries, or

(d) propose a director or a slate of directors in opposition to any nominee or slate of nominees proposed by the management or board of directors of any Bank.

3. None of _____, the subsidiaries of _____, the _____ or the Managed Accounts will dispose of voting securities of a Bank:

(a) to any person if _____ or any of its subsidiaries knows that such person seeks to change the control of the Bank in any manner; or

(b) to any person whom _____ or its subsidiary knows (i) has made a filing with the SEC or other federal agency with respect to the ownership of more than five percent of the Bank's voting securities or (ii) would be required to do so as a result of the purchase from _____, its subsidiary, a _____, or a Managed Account; or

(c) in an amount of more than five percent of the Bank's voting securities in any single transaction;

provided that notwithstanding paragraphs (a) through (c) above, the _____ and Managed Accounts may dispose of their stock in a Bank in the following circumstances:

(i) in a cross trade between two or more _____ or Managed Accounts in compliance with the rules governing such cross trades under the 1940 Act;

(ii) in the case of paragraph (c), above, in a bunched trade effected for two or more _____ or Managed Accounts in compliance with the rules governing bunched trades under the 1940 Act;

- (iii) in a sale by a _____ or Managed Account to the Bank or one of its subsidiaries;
- (iv) in a tender or exchange offer for voting stock of the Bank; or
- (v) in one or more open market transactions effected on a stock exchange or in the over-the-counter market (which may include a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the shares sold to it or them in accordance with its or their normal business practices).

4. None of _____, the subsidiaries of _____, the _____, or the Managed Accounts will threaten to dispose of voting shares in any manner as a condition of specific action or non-action by the Bank.

(5) None of _____, any subsidiary of _____, any _____, or any Managed Account will individually own, control, or hold with power to vote more than 10 percent of any class of voting securities of a Bank.

May 25, 2010

Confidential Treatment Requested

VIA ELECTRONIC MAIL

Mr. Kenneth Sayre-Peterson
Acting General Counsel
California Department of Financial Institutions
1810 -13th Street
Sacramento, CA 95811-7118

Re: _____ - Voting of Shares Held by _____

Dear Mr. Sayre-Peterson:

On behalf of our client _____, this letter follows up on your recent telephone conversation with _____ and supplements _____'s initial filing made in the letter from _____ to Kenneth Sayre-Peterson dated April 12, 2010 (the "April 12 Letter") regarding _____'s aggregate indirect holdings in _____ ("_____")¹.

During the call, you and _____ discussed whether, under the California Financial Code, _____ shares held in portfolios of various customer accounts and investment funds in the family of mutual funds (the "_____") that are managed by _____ ("_____"), a direct wholly-owned subsidiary of _____, should be aggregated for purposes of ascertaining the percentage of voting shares held by _____. This question arose in the context of investments by various _____ that, while remaining under 10% of the voting shares of _____ with respect to the investment by any single _____, in the aggregate equal approximately 10.048% of the voting shares of _____. As detailed in the April 12 Letter, if such investments were to be aggregated, _____ would have exceeded California's 10% beneficial ownership limit due to the inadvertent exclusion of an individual _____'s holdings from _____'s compliance monitoring system in connection with a systems modification.

During the call, you and _____ also discussed that if each of the _____ has discretion to exercise the voting rights attached to the Fund's portfolio securities, it would not be necessary to aggregate shares of _____ held by the _____ for purposes of determining control under Section 700(b) of the California Financial Code. In order to assist you in making this determination, you requested that we provide additional information regarding the voting practices of the _____.

¹ _____ controls _____, a California state-chartered member bank headquartered in Santa Clara, California.

As described more fully below, the voting power in shares held by the _____ resides with each _____'s Board of Trustees. In practice, _____ administratively carries out the voting of such shares in accordance with Board-approved proxy voting guidelines and in a manner consistent with its fiduciary obligation to act in the best interests of fund shareholders.

I. Background

As of March 15, 2010 _____ had, through investment holdings across 29 different _____, indirect beneficial ownership of 10.048% of the total _____ common shares outstanding. The largest holding of any single _____ is only 1,741,010 _____ common shares, or 4.208% of the total _____ common shares outstanding. _____ has regularly asserted in filings submitted with the Securities and Exchange Commission ("SEC") on Schedule 13G under the Securities Exchange Act of 1934 (the "1934 Act") that it does not influence or control the policies or management of _____ and that, to the extent that beneficial ownership of _____ shares may be attributed to _____, it arises solely in the context of passive investment activities.²

As noted in the April 12 Letter, each _____ has its own investment policies and objectives, and investment decisions are made on a fund-by-fund basis. Each _____ is marketed to investors on the basis of a specified investment strategy that is predicated upon its acting as a passive investor. Moreover, investments are made with the expectation of holding for an appreciable return and eventual resale, and neither _____ nor the _____ influence or control, nor intend to influence or control, the policies or management of any portfolio company.

As owners of the securities held in their respective portfolios, each of the _____ possesses all the attributes of share ownership, including the right to vote proxies relating to such securities. However, because the _____, like most registered investment companies, do not have their own employees, their day-to-day affairs, including the voting of proxies with respect to their portfolio companies, are carried out by _____. It is important to note, however, that while _____ has the delegated authority to vote portfolio company proxies, it does not have the discretion to vote them in its own interest or otherwise in a manner of its choosing.³ As a fiduciary, _____ is required to vote proxies in the best interests of fund shareholders.

² _____ filed with the SEC a Schedule 13G dated February 12, 2010 concerning its indirect beneficial ownership of _____ shares pursuant to Rule 13d-I(b) under the 1934 Act.

³ Accordingly, on its Schedule 13G report of beneficial ownership filed with the SEC with respect to _____ (*see infra*, note 2), _____ expressly disclaims that it has the power to vote or direct the vote of shares of _____ owned by the _____, because this power resides with the Boards of Trustees of the _____ and _____ carries out the voting under the written guidelines adopted by the Trustees. _____ reports that it has "beneficial ownership" for purposes of Schedule 13G of shares held by the _____ only because _____ has investment power over these shares as a discretionary investment adviser to the _____.

To ensure that investment advisers vote portfolio company proxies in the interest of mutual fund shareholders and other clients, the SEC has established a regulatory framework within which such voting must occur. Rules 206(4)-6 under the Investment Advisers Act of 1940 requires, among other things, that an adviser adopt proxy voting policies reasonably designed to ensure that the adviser votes proxies in the best interests of its clients, including policies that address material conflicts of interest. Because a mutual fund is the owner of its portfolio securities, the fund's board of trustees, acting on the fund's behalf, has the right and obligation to vote proxies relating to the fund's portfolio securities. This responsibility is typically delegated to the fund's adviser, subject to oversight by the board of trustees.

The Trustees of the _____, the majority of whom are independent of _____, have adopted a detailed set of formal written guidelines (the "Voting Guidelines") to govern the exercise of voting rights attached to the _____' portfolio securities, and have delegated to _____, as investment adviser to the _____, the authority to carry out this function in accordance with the Voting Guidelines. _____ is required to vote portfolio company shares owned by the _____ in accordance with the Voting Guidelines. The Voting Guidelines are predicated on the basic principle that the _____' portfolio holdings are acquired and held for passive investment purposes, not for the purpose of exercising control over the operations or management of a portfolio company. At the same time, the Voting Guidelines seek to vindicate the interests of the _____ as investors by, for example, protecting the voting rights of common stockholders. A copy of the Voting Guidelines is attached as Exhibit A.⁴

On issues with the potential to have a direct and significant impact on the value of a _____'s investment in a company--for example, a merger or sale of the company or a contested director election--determinations on how shares should be voted are made on a fund-by-fund basis. The Voting Guidelines expressly provide that such non-routine matters will be evaluated with input from the relevant research analysts and the portfolio managers of the several _____ that hold the shares. Such fund-by-fund evaluations could result, and from time to time have resulted, in the various _____ casting their votes differently on the proposal, based on the portfolio managers' differing assessments of the proposal in light of the _____' different investment objectives and strategies. On routine issues, the Voting Guidelines generally result in the shares of a particular company held by the several _____ being voted the same way. However, the Voting Guidelines are not designed to achieve uniformity in voting with a view to exerting a controlling influence over portfolio companies, but rather to complement the investment decision-making approach by evaluating proxy proposals based on their economic merit and their likelihood to enhance investment returns for the shareholders of the _____.

⁴ The Voting Guidelines are publicly disclosed in each _____'s registration statement contained on the SEC website and are available on _____'s website at _____.

II. Discussion

As noted in the April 12 Letter, for purposes of the California Financial Code, a person controls a bank if it possesses, directly or indirectly, the power to (i) vote 25% or more of any class of the voting securities issued by the bank, or (ii) direct or cause the direction of the management and policies of a bank, whether through the ownership of voting securities, by contract or otherwise⁵. In addition, there is also a rebuttable presumption of control if an acquiring person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies representing, 10% or more (but less than 25%) of any of the then outstanding voting securities issued by a bank.⁶ Pursuant to the California Financial Code, any person, whether acting directly or indirectly, must file an application with the California Department of Financial Institutions (the "DFI") before acquiring control of a bank.⁷

As explained in Part I above, although _____ administratively carries out the voting of the _____ ' shares, the legal right to vote the shares belongs to each _____. Each of the _____ is managed in accordance with its own investment objectives and cannot be deemed to be acting in concert with other _____. None of the _____ individually owns or controls, nor will any _____ individually own or control, 10% or more of any class of voting securities of _____. While _____ has the technical authority to vote _____ portfolio company proxies, in doing so it is guided by its fiduciary obligation to act in the best interests of fund shareholders and by the Board-approved Voting Guidelines. _____ therefore does not "control" the shares in the sense that it would if it could vote them in its interest or at its discretion.

On the basis of the foregoing facts and circumstances, we request your determination that the shares of _____ held by the _____ should not be aggregated for purposes of determining control under Section 700(b) of the California Financial Code. We also request your determination that because each of the _____ holds less than 10% of the voting shares of _____, neither _____ nor any of the _____ should be presumed to have acquired control of _____ pursuant to the California Financial Code, and therefore, neither _____ nor the _____ should be required to file a control application with the DFI pursuant to the California Financial Code. If you disagree with the above requests, we seek in the alternative your concurrence with the rebuttal of control request set forth in the April 12 Letter.

_____ respectfully requests on behalf of itself and its affiliates confidential treatment for this letter in accordance with the terms of the April 12 Letter.

⁵ Cal.Fin.Code § 700(b).

⁶ *Id.*

⁷ Cal.Fin.Code § 701.

May 25, 2010

Page 5

We appreciate your assistance and advice in this matter. Please do not hesitate to contact me, or my colleague _____ at _____, if you have any questions about this letter or about our request for confidential treatment.

Sincerely,

EXHIBIT A
CONFIDENTIAL TREATMENT REQUESTED

_____ ' PROXY VOTING GUIDELINES ("GUIDELINES")
March 2010

I. General Principles

- A. Voting of shares will be conducted in a manner consistent with the best interests of _____ shareholders as follows: (i) securities of a portfolio company will generally be voted in a manner consistent with the Guidelines; and (ii) voting will be done without regard to any other _____ companies' relationship, business or otherwise, with that portfolio company.
- B. _____ votes proxies. In the event an Investment Proxy Research employee has a personal conflict with a portfolio company or an employee or director of a portfolio company, that employee will withdraw from making any proxy voting decisions with respect to that portfolio company. A conflict of interest arises when there are factors that may prompt one to question whether a _____ employee is acting solely on the best interests of _____ and its customers. Employees are expected to avoid situations that could present even the appearance of a conflict between their interests and the interests of _____ and its customers.
- C. Except as set forth herein, _____ will generally vote in favor of routine management proposals.
- D. Non-routine proposals will generally be voted in accordance with the Guidelines.
- E. Non-routine proposals not covered by the Guidelines or involving other special circumstances will be evaluated on a case-by-case basis with input from the appropriate _____ analyst or portfolio manager, as applicable, subject to review by an attorney within _____'s General Counsel's office and a member of senior management within _____ Investment Proxy Research. A significant pattern of such proposals or other special circumstances will be referred to the appropriate _____ Board Committee or its designee.
- F. _____ will vote on shareholder proposals not specifically addressed by the Guidelines based on an evaluation of a proposal's likelihood to enhance the economic returns or profitability of the portfolio company or to maximize shareholder value. Where information is not readily available to analyze the economic impact of the proposal, _____ will generally abstain.
- G. Many _____ invest in voting securities issued by companies that are domiciled outside the United States and are not listed on a U.S. securities exchange. Corporate governance standards, legal or regulatory requirements and disclosure practices in foreign countries can differ from those in the United States. When voting proxies relating to non U.S. securities, _____ will generally evaluate proposals in the context of the Guidelines, but _____ may, where applicable and feasible, take into consideration differing laws and regulations in the relevant foreign market in determining how to vote shares.

- H. In certain non-U.S. jurisdictions, shareholders voting shares of a portfolio company may be restricted from trading the shares for a period of time around the shareholder meeting date. Because such trading restrictions can hinder portfolio management and could result in a loss of liquidity for a fund, _____ will generally not vote proxies in circumstances where such restrictions apply. In addition, certain non-U.S. jurisdictions require voting shareholders to disclose current share ownership on a fund-by-fund basis. When such disclosure requirements apply, _____ will generally not vote proxies in order to safeguard fund holdings information.
- I. Where a management-sponsored proposal is inconsistent with the Guidelines, _____ may receive a company's commitment to modify the proposal or its practice to conform to the Guidelines, and _____ will generally support management based on this commitment. If a company subsequently does not abide by its commitment, _____ will generally withhold authority for the election of directors at the next election.

II. Definitions (as used in this document)

- A. Anti-Takeover Provision - includes fair price amendments; classified boards; "blank check" preferred stock; Golden Parachutes; supermajority provisions; Poison Pills; restricting the right to call special meetings; and any other provision that eliminates or limits shareholder rights.
- B. Golden Parachute - Employment contracts, agreements, or policies that include an excise tax gross-up provision; single trigger for cash incentives; or may result in a lump sum payment of cash and acceleration of equity that may total more than three times annual compensation (salary and bonus) in the event of a termination following a change in control.
- C. Greenmail - payment of a premium to repurchase shares from a shareholder seeking to take over a company through a proxy contest or other means.
- D. Sunset Provision - a condition in a charter or plan that specifies an expiration date.
- E. Permitted Bid Feature - a provision suspending the application of a Poison Pill, by shareholder referendum, in the event a potential acquirer announces a bona fide offer for all outstanding shares.
- F. Poison Pill - a strategy employed by a potential take-over / target company to make its stock less attractive to an acquirer. Poison Pills are generally designed to dilute the acquirer's ownership and value in the event of a take-over.
- G. Large-Capitalization Company - a company included in the Russell 1000® Index.
- H. Small Capitalization Company - a company not included in the Russell 1000® Index that is not a Micro-Capitalization Company.
- I. Micro-Capitalization Company - a company with market capitalization under US \$300 million.
- J. Evergreen Provision – a feature which provides for an automatic increase in the shares available for grant under an equity award plan on a regular basis.

III. Directors

A. Incumbent Directors

_____ will generally vote in favor of incumbent and nominee directors except where one or more such directors clearly appear to have failed to exercise reasonable judgment. _____ will also generally withhold authority for the election of all directors or directors on responsible committees if:

1. An Anti-Takeover Provision was introduced, an Anti-Takeover Provision was extended, or a new Anti-Takeover Provision was adopted upon the expiration of an existing Anti-Takeover Provision, without shareholder approval except as set forth below.

With respect to Poison Pills, however, _____ will consider not withholding authority on the election of directors if all of the following conditions are met when a Poison Pill is introduced, extended, or adopted:

- a. The Poison Pill includes a Sunset Provision of less than five years;
- b. The Poison Pill includes a Permitted Bid Feature;
- c. The Poison Pill is linked to a business strategy that will result in greater value for the shareholders; and
- d. Shareholder approval is required to reinstate the Poison Pill upon expiration.

_____ will also consider not withholding authority on the election of directors when one or more of the conditions above are not met if a board is willing to strongly consider seeking shareholder ratification of, or adding above conditions noted a. and b. to an existing Poison Pill. In such a case, if the company does not take appropriate action prior to the next annual shareholder meeting, _____ will withhold authority on the election of directors.

2. The company refuses, upon request by _____, to amend the Poison Pill to allow _____ to hold an aggregate position of up to 20% of a company's total voting securities and of any class of voting securities.
3. Within the last year and without shareholder approval, a company's board of directors or compensation committee has repriced outstanding options, exchanged outstanding options for equity, or tendered cash for outstanding options.
4. The company failed to act in the best interests of shareholders when approving executive compensation, taking into account such factors as: (i) whether the company used an independent compensation committee; (ii) whether the compensation committee engaged independent compensation consultants; (iii) whether the company has admitted to or settled a regulatory proceeding relating to options backdating; (iv) whether the compensation committee has lapsed or waived equity vesting restrictions; and (v) whether the company has adopted or extended a Golden Parachute without shareholder approval.

5. To gain _____'s support on a proposal, the company made a commitment to modify a proposal or practice to conform to the Guidelines and the company has failed to act on that commitment.
6. The director attended fewer than 75% of the aggregate number of meetings of the board or its committees on which the director served during the company's prior fiscal year, absent extenuating circumstances.
7. The board is not composed of a majority of independent directors.

B. Indemnification

_____ will generally vote in favor of charter and by-law amendments expanding the indemnification of directors and/or limiting their liability for breaches of care unless _____ is otherwise dissatisfied with the performance of management or the proposal is accompanied by Anti-Takeover Provisions.

C. Independent Chairperson

_____ will generally vote against shareholder proposals calling for or recommending the appointment of a non-executive or independent chairperson. However, _____ will consider voting for such proposals in limited cases if, based upon particular facts and circumstances, appointment of a non-executive or independent chairperson appears likely to further the interests of shareholders and to promote effective oversight of management by the board of directors.

D. Majority Director Elections

_____ will generally vote in favor of proposals calling for directors to be elected by an affirmative majority of votes cast in a board election, provided that the proposal allows for plurality voting standard in the case of contested elections (i.e., where there are more nominees than board seats). _____ may consider voting against such shareholder proposals where a company's board has adopted an alternative measure, such as a director resignation policy, that provides a meaningful alternative to the majority voting standard and appropriately addresses situations where an incumbent director fails to receive the support of a majority of the votes cast in an uncontested election.

IV. Compensation

A. Equity award plans (including stock options, restricted stock awards, and other stock awards).

_____ will generally vote against equity award plans or amendments to authorize additional shares under such plans if:

1. (a) The dilution effect of the shares outstanding and available for issuance pursuant to all plans, plus any new share requests is greater than 10% for a Large-Capitalization Company, 15% for a Small-Capitalization Company or 20% for a Micro-Capitalization Company; and
(b) there were no circumstances specific to the company or the plans that lead _____ to conclude that the level of dilution in the plan or the amendments is acceptable.

2. In the case of stock option plans, (a) the offering price of options is less than 100% of fair market value on the date of grant, except that the offering price may be as low as 85% of fair market value if the discount is expressly granted in lieu of salary or cash bonus; (b) the plan's terms allow repricing of underwater options; or (c) the board/committee has repriced options outstanding under the plan in the past two years without shareholder approval.
3. In the case of stock awards, the restriction period is less than three years for non-performance-based awards, and less than one year for performance-based awards.
4. The plan includes an Evergreen Provision.
5. The plan provides for the acceleration of vesting of equity awards even though an actual change in control may not occur.

_____ will consider approving an equity award plan or an amendment to authorize additional shares under such plan if, without complying with the guidelines immediately above, the following two conditions are met:

1. The shares are granted by a compensation committee composed entirely of independent directors; and
2. The shares are limited to 5% (Large-Capitalization Company) and 10% (Small-or Micro-Capitalization Company) of the shares authorized for grant under the plan.

B. Equity Exchanges and Repricing

_____ will generally vote in favor of a management proposal to exchange, reprice or tender for cash, outstanding options if the proposed exchange, repricing, or tender offer is consistent with the interests of shareholders, taking into account such factors as:

1. Whether the proposal excludes senior management and directors;
2. Whether the exchange or repricing proposal is value neutral to shareholders based upon an acceptable pricing model;
3. The company's relative performance compared to other companies within the relevant industry or industries;
4. Economic and other conditions affecting the relevant industry or industries in which the company competes; and
5. Any other facts or circumstances relevant to determining whether an exchange or repricing proposal is consistent with the interests of shareholders.

C. Employee Stock Purchase Plans

_____ will generally vote in favor of employee stock purchase plans if the minimum stock purchase price is equal to or greater than 85% of the stock's fair market value and the plan constitutes a reasonable effort to encourage broad based participation in the company's equity. In the case of non-U.S. company stock purchase plans, _____ may permit a lower minimum stock purchase price equal to the prevailing "best practices" in the relevant non-U.S. market, provided that the minimum stock purchase price must be at least 75% of the stock's fair market value.

D. Employee Stock Ownership Plans (ESOPs)

_____ will generally vote in favor of non-leveraged ESOPs. For leveraged ESOPs, _____ may examine the company's state of incorporation, existence of supermajority vote rules in the charter, number of shares authorized for the ESOP, and number of shares held by insiders. _____ may also examine where the ESOP shares are purchased and the dilution effect of the purchase. _____ will generally vote against leveraged ESOPs if all outstanding loans are due immediately upon change in control.

E. Executive Compensation

_____ will generally vote against management proposals on stock-based compensation plans or other compensation plans if such proposals are inconsistent with the interests of shareholders, taking into account such factors as:(i) whether the company has an independent compensation committee; and (ii) whether the compensation committee has authority to engage independent compensation consultants.

F. Bonus Plans and Tax Deductibility Proposals

_____ will generally vote in favor of cash and stock incentive plans that are submitted for shareholder approval in order to qualify for favorable tax treatment under Section 162(m) of the Internal Revenue Code, provided that the plan includes well defined and appropriate performance criteria, and with respect to any cash component, that the maximum award per participant is clearly stated and is not unreasonable or excessive.

V. Anti-Takeover Provisions

_____ will generally vote against a proposal to adopt or approve the adoption of an Anti-Takeover Provision unless:

A. The Poison Pill includes the following features:

1. A Sunset Provision of no greater than five years;
2. Linked to a business strategy that is expected to result in greater value for the shareholders;
3. Requires shareholder approval to be reinstated upon expiration or if amended;
4. Contains a Permitted Bid Feature; and
5. Allows the _____ to hold an aggregate position of up to 20% of a company's total voting securities and of any class of voting securities.

B. An Anti-Greenmail proposal that does not include other Anti-Takeover Provisions; or

C. It is a fair price amendment that considers a two-year price history or less.

_____ will generally vote in favor of a proposal to eliminate an Anti-Takeover Provision unless:

D. In the case of proposals to declassify a board of directors, _____ will generally vote against such a proposal if the issuer's Articles of Incorporation or applicable statutes include a provision whereby a majority of directors may be removed at anytime, with or

without cause, by written consent, or other reasonable procedures, by a majority of shareholders entitled to vote for the election of directors.

- E. In the case of proposals regarding shareholders' right to call special meetings, _____ generally will vote against each proposal if the threshold required to call a special meeting is less than 25% of the outstanding stock.

VI. Capital Structure / Incorporation

A. Increase in Common Stock

_____ will generally vote against a provision to increase a company's common stock if such increase will result in a total number of authorized shares greater than three times the current number of outstanding and scheduled to be issued shares, including stock options, except in the case of real estate investment trusts, where an increase that will result in a total number of authorized shares up to five times the current number of outstanding and scheduled to be issued shares is generally acceptable.

B. New Classes of Shares

_____ will generally vote against the introduction of new classes of stock with differential voting rights.

C. Cumulative Voting Rights

_____ will generally vote against the introduction and in favor of the elimination of cumulative voting rights.

D. Acquisition or Business Combination Statutes

_____ will generally vote in favor of proposed amendments to a company's certificate of incorporation or by-laws that enable the company to opt out of the control shares acquisition or business combination statutes.

E. Incorporation or Reincorporation in Another State or Country

_____ will generally vote against shareholder proposals calling for, or recommending that, a portfolio company reincorporate in the United States and vote in favor of management proposals to reincorporate in a jurisdiction outside the United States if (i) it is lawful under United States, state and other applicable law for the company to be incorporated under the laws of the relevant foreign jurisdiction and to conduct its business and (ii) reincorporating or maintaining a domicile in the United States would likely give rise to adverse tax or other economic consequences detrimental to the interests of the company and its shareholders. However, _____ will consider supporting such shareholder proposals and opposing such management proposals in limited cases if, based upon particular facts and circumstances, reincorporating in or maintaining a domicile in the relevant foreign jurisdiction gives rise to significant risks or other potential adverse consequences that appear reasonably likely to be detrimental to the interests of the company or its shareholders.

VII. Shares of Investment Companies

- A. When a _____ invests in an underlying _____ with public shareholders, an exchange traded fund (ETF), or non-affiliated fund, _____ will vote in the same

proportion as all other voting shareholders of such underlying fund or class ("echo voting").
_____ may choose not to vote if "echo voting" is not operationally feasible.

- B. Certain _____ may invest in shares of underlying _____, which are held exclusively by _____ or accounts managed by _____ or an affiliate. _____ will generally vote in favor of proposals recommended by the underlying funds' Board of Trustees.

VIII. Other

A. Voting Process

_____ will generally vote in favor of proposals to adopt confidential voting and independent vote tabulation practices.

B. Regulated Industries

Voting of shares in securities of any regulated industry (e.g., U.S. banking) organization shall be conducted in a manner consistent with conditions that may be specified by the industry's regulator (e.g., the Federal Reserve Board) for a determination under applicable law (e.g., federal banking law) that no _____ or group of _____ has acquired control of such organization.

* * *