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August 8, 1983

Mr. Patrick Sharpe
PreMerger Notification Office
Room 301, Federal Trade Commission
Pennsylvania Avenue & Sixth St., N.W.
Washington, D. C. 20580

Dear Mr. Sharpe:

In a brief telephone conversation on Monday, August 8, 1983, I asked your assistance in evaluating a transaction in which my client will be involved. The enclosed chart will hopefully be of some help in evaluating the deal. I would appreciate it if you would have a staff attorney call me as soon as possible, so that I can fill in some of the information that is missing from the chart, and review my tentative conclusions.

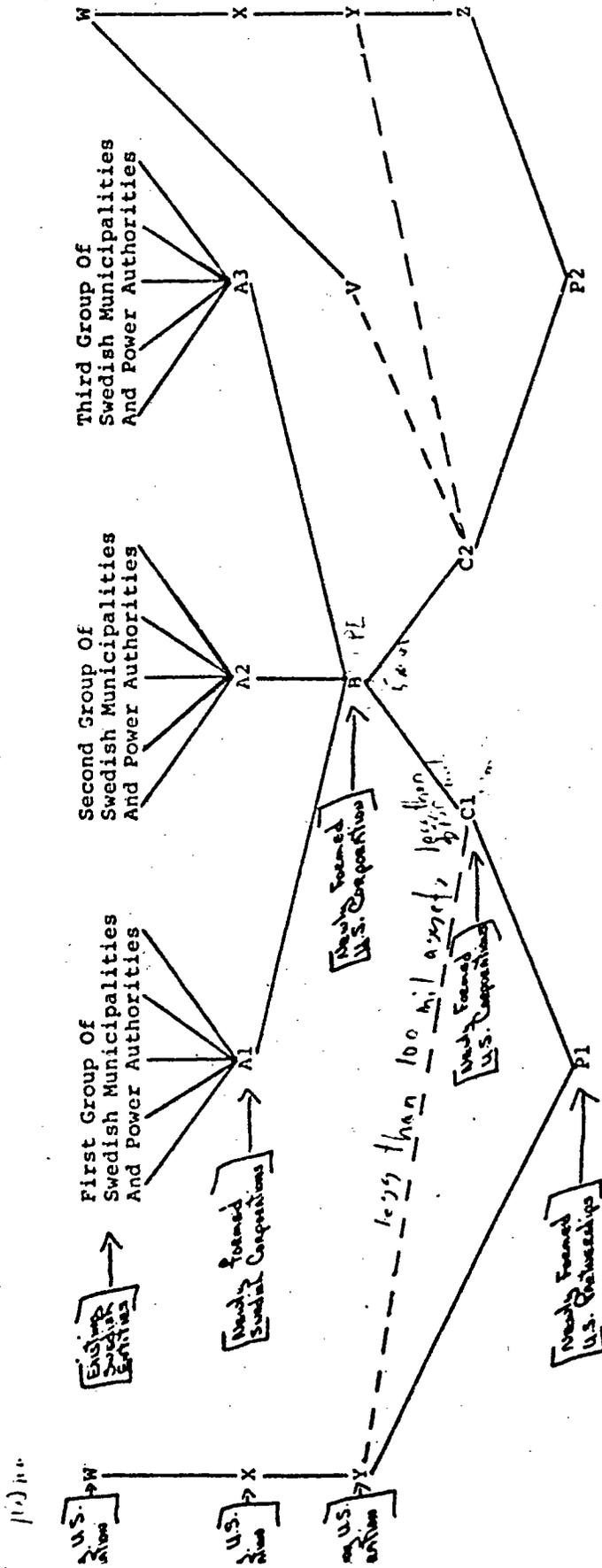
Your assistance is appreciated.

Sincerely,

[Redacted Signature]

[Redacted]

Enclosure



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the court having jurisdiction, proceed to close such accounts as can be closed promptly and transfer all other accounts to substitute fiduciaries.

(b) Whenever a national bank exercising fiduciary powers is placed in voluntary liquidation, the liquidating agent shall, in accordance with the local law, proceed at once to liquidate the affairs of the trust department as follows:

(1) All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the orders or instructions of such court;

(2) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

§ 9.17. Surrender or revocation of fiduciary powers.

(a) Any national bank which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the Comptroller of the Currency a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

(b) If, in the opinion of the Comptroller, a national bank is unlawfully or fraudulently exercising or has unlawfully or fraudulently exercised, or has failed for a period of five consecutive years to exercise its fiduciary powers, or otherwise fails or has failed to comply with any of the requirements set forth in 12 U.S.C. 92a, the Comptroller may, in accordance with the provisions of that section, revoke the fiduciary powers granted to the bank.

(c) Effective June 25, 1927.

§ 9.18. Collective investment.

(a) Where not in contravention of any law, funds held by a national

bank as fiduciary may be invested 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.

(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.

(b) Collective investments of funds or other property by national banks under paragraph (a) of this section (referred to in this paragraph as "collective investment funds") shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund, the allocation of income, profits and losses, the terms and conditions governing the admission or withdrawal of participations in the fund, the auditing of accounts of the bank with respect to the fund, the basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset, the minimum frequency for valuation of assets of the fund, the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days), the basis upon which the fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided in paragraph (b)(15) of this section, fund assets shall be valued at market value

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counting would ordinarily be rendered with respect to each participating account. A copy of such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this section may be given publicity solely in connection with the promotion of the fiduciary services of the bank.

(v) Except as herein provided, the bank shall not advertise or publicize its collective investment fund(s) described in paragraph (a)(1) of this section.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. *Provided*, That all distributions as of any one valuation date shall be made on the same basis.

(7) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8) No bank shall have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash over drafts or as otherwise specifically provided herein, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates. *Provided*, That such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this part, funds held by a bank as fiduciary for its own employees may be invested in a collective investment fund. A bank may not make any loan on the security of a participation in a fund. If

because of a creditor relationship or otherwise the bank acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

(11) Any bank administering a collective investment fund may purchase for its own account from such fund any defaulted fixed income investment held by such fund, if in the judgment of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to so purchase such investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) Except in the case of collective investment funds described in paragraph (a)(2) of this section:

(i) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund. *Provided*, That in applying this limitation if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one.

(ii) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any one person, firm, or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess of 10 percent of the then market value of the fund. *Provided*, That this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed

by the United States as to principal and interest;

(iii) A bank administering a collective investment fund shall maintain, in cash and readily marketable investments, such percentage of the assets of the fund as is necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

(10) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank administering the fund.

(11) (i) A bank may (but shall not be required to) transfer up to 5 percent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account: *Provided*, That no such transfers shall be made which would cause the amount in such account to exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

(12) A national bank administering a collective investment fund shall have the exclusive management thereof. The bank may charge a fee for the management of the collective investment fund: *Provided*, That the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been in-

vested in participations in the fund. The bank shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) No bank administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

(14) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

(15) Short-term investment funds established under paragraph (a) of this section may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies the following conditions:

(i) Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(ii) The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis.

(iii) Assets of the fund must be held until maturity under usual circumstances; and

(iv) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

(v) In addition to the investments permitted under paragraph (a) of this section, funds or other property received or held by a national bank as fiduciary may be invested collectively, to the extent not prohibited by local law, as follows:

(1) In states of a mutual trust investment company organized and operated pursuant to a statute that specifically authorizes the organization of

such companies or investment of fund fiduciaries, common bank fiduciary fu

(2) (i) In a single direct obligation or an obligation the United States amount security, property, either

mixed, of a single

(ii) On a short-term amount note prime credit: *Provided*, That shall be maintained premises and may only for investment its trust department *Provided further*, That participation in transactions authorized (CH2) (i) or (ii) of no interest in any except in its capacity

(3) In a commitment by the bank investment of cash or held by a bank trustee, executor guardian, which shall be individually to be separately to admission: for exceeded \$100,000, participating account and no participant have an interest of \$10,000. *Provided* these limitations counts are created or persons and as the income or account is presently due to the use of persons, such accrued as one: And fund shall be established under this paragraph of avoiding the

graph (b) of this section.

(4) In any investment authorized by court by the instrumentary relationship created by a complex and affiliates equal settlers who *Provided* That as made under this

and Banking

the fund. The costs of issuing a collective

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in good faith. In case in connection of a fund shall be part of the amount whatever it may be. The mistake in the funds estimated of this cost. The basis for the withdrawal satisfies

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Chapter I—Comptroller of the Currency, Dept. of Treasury

§ 9.20

such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank fiduciary fund."

(2) (i) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(ii) On a short-term basis in a variable amount note of a borrower of prime credit. *Provided*, That such note shall be maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts. *Provided further*, That the bank owns no participation in the loans or obligations authorized under paragraph (c)(2)(i) or (ii) of this section, and has no interest in any investment therein except in its capacity as fiduciary.

(3) In a common trust fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage. The total investment for such funds must not exceed \$100,000, the number of participating accounts is limited to 100, and no participating account may have an interest in the fund in excess of \$10,000. *Provided*, That in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons, such account shall be considered as one. *And provided*, That no fund shall be established or operated under this paragraph for the purpose of avoiding the provisions of paragraph (b) of this section.

(4) In any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. *Provided*, That such investment is not made under this subparagraph for the

purpose of avoiding the provisions of paragraph (b) of this section.

(5) In such other manner as shall be approved in writing by the Comptroller of the Currency.

(37 FR 24161, Nov. 15, 1972, as amended at 40 FR 18771, Apr. 30, 1975, 40 FR 20612, May 12, 1975, 41 FR 26679, June 29, 1976, 41 FR 47930, Nov. 1, 1976, 47 FR 27832, June 25, 1982)

§ 9.19 Forms.

All forms referred to in this part and all such forms as amended from time to time shall be a part of this part.

§ 9.20 Registration of national bank transfer agents.

(a) An application for registration, pursuant to section 177(c) of the Securities Exchange Act of 1934, as amended (the "Act") of a transfer agent for which the Comptroller is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Act, shall be filed with the Comptroller on Form TA-1, in accordance with the instructions contained therein and shall become effective on the thirtieth day following the date on which the application is filed, unless the Comptroller takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act.

(b) The filing of any amendment to an application for registration as a transfer agent pursuant to paragraph (a) of this section, which registration has not become effective, shall postpone the effective date of the registration until the thirtieth day following the date on which the amendment is filed, unless the Comptroller takes affirmative action to accelerate, deny or postpone the registration in accordance with the provisions of section 17A(c) of the Act.

(c) Within sixty calendar days following the date on which any information reported on Form TA-1 becomes inaccurate, misleading or incomplete, the registrant shall file an amendment on Form TA-1 correcting the inaccurate, misleading or incomplete information.

(d) Every registration and amendment filed pursuant to this section