[redacted]

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April 13, 1987

Wayne Kaplan, Esq.
Pre-Merger Notification Office
Room 301
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Kaplan:

Subject: [redacted]

1. We wish to confirm in this letter the substance of our telephone conversation of February 13, 1987. In that conversation, we discussed the obligations of investment advisers and managers (the "Managers") to give advance notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") of proposed acquisitions of voting securities for the account of unit trusts (or mutual funds), investment trust companies and private investors (collectively, the "Investors") for which the Managers exercise broad discretionary investment powers, including the power to purchase, sell and vote such securities. The question is whether or not, for purposes of the Act, the Managers may be deemed to "hold" within the meaning of 16 CFR §801.1(c) such voting securities, either because the Managers are deemed to control the Investors, or because the Managers are deemed to have beneficial ownership of such securities, by virtue of their investment and voting powers.

2. In this case, all of the Managers are indirect subsidiaries of one ultimate parent entity, [redacted], a publicly held [redacted] company with a number of direct and indirect subsidiaries, most of which play no part in managing investments in United States securities. Two of [redacted] 100% owned subsidiaries - [redacted] and [redacted] Holdings [redacted]"), both of which are [redacted] companies,

are in turn holding companies for a network of investment management and advisory companies.

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

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

5. Under 16 CFR §801.1(a)(1), [redacted] together with all entities which it controls directly or indirectly, constitute a single "person" for purposes of the Act. Because [redacted] holds, either directly or indirectly through its wholly-owned subsidiaries, 50% or more of the outstanding voting securities issued by [redacted] "controls" each of such entities within the meaning of 16 CFR §801.1(b). Therefore, [redacted] is the "ultimate parent entity" of a single "person" which includes each of the controlled entities named above and all other entities which are controlled by [redacted] (hereinafter referred to as the [redacted]. As of December 31, 1985, [redacted] and its subsidiaries (prior to the acquisition of [redacted]) had total assets of approximately $234,000,000 and annual turnover of approximately $723,000,000 (figures are converted from pounds sterling at approximately the current rates of exchange).

6. Within the [redacted] are all Managers of voting securities owned by Investors. [redacted] function solely as holding companies. [redacted] function solely as managers of unit trusts. [redacted] functions variously as: (i) a manager of unit trusts (the

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

7. Under 16 CFR §801.1(c)(8), if the investment management and advisory functions of the [redacted] were deemed to constitute "control" over any Investor, such Investor would be treated as a member entity of the [redacted] and the [redacted] would be treated as holding any voting securities which are held by that Investor. In our opinion, the investment management and advisory functions performed on behalf of Investors by those members of the [redacted] referred to in this letter do not amount to "control" over such Investors within the meaning of 16 CFR §801.1(b).

8. Even if the [redacted] does not "control" an Investor, the [redacted] will be treated as holding securities owned by that Investor if a member of the [redacted] has "beneficial ownership" of such securities within the meaning of 16 CFR §801.1 (c)(1) or if any of the special provisions of 16 CFR §801.1(c)(2)-(8) apply. In our opinion, none of the members of the [redacted] referred to in this letter has "beneficial ownership" of Investors' securities under their management within the meaning of 16 CFR §801.1(c)(1), and none of the special provisions applicable to trusts and collective investment funds operates to change this result. Because the relationships between the members of the [redacted] and

their respective clients are of several different types, they are separately discussed in this letter.

9. As stated above, [redacted] function solely as managers of unit trusts. [redacted] serves as Manager to [redacted] and to [redacted] both of which are unit trusts organized under the laws of England. Power to direct the activities of each unit trust is divided between [redacted] as Manager and the respective Trustees. The principal power to manage each unit trust's assets is held by its Manager, while each Trustee has a veto power over the Manager's decisions. As Manager, [redacted] determines how the assets of [redacted] will be invested, [redacted] purchases and sells investments owned by [redacted] and [redacted] on behalf of those unit trusts and [redacted] votes any voting securities owned by [redacted] Most decisions and activities undertaken in the names of [redacted] are made and carried out by [redacted] on behalf of the unit trusts.

10. Under 16 CFR §801.1 (b), [redacted] would be treated as having "control" over [redacted] or [redacted] if [redacted] either holds 50% of the outstanding voting securities of [redacted] or has the contractual power to designate a majority of the directors (or individuals exercising similar functions).

11. "Voting securities" are defined under 16 CFR §801.1 (f)(i) as "any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer ... or, with respect to unincorporated entities, individuals exercising similar functions." Neither [redacted] have issued "voting securities" as so defined. Both [redacted] have issued units which have some voting powers; in terms of choosing management, the Unit Holders of each unit trust have the power to remove its Manager, but do not have the power to elect or appoint a new Manager or to remove the Trustee. Under the terms of the Trust Deed, any voting units held by [redacted] as the Manager are disregarded for purposes of

a vote on a proposed removal of the Manager. Thus, even if the Units can be considered "voting securities", they have no voting power in [redacted] hands with respect to maintaining its own tenure of management.

12. We have also confirmed that [redacted] does not have the contractual power to designate a majority of the Directors (or individuals exercising similar functions) of [redacted] The Statement of Basis and Purpose published by the Federal Trade Commission, 43 FR 33450, at page 33459 provides: "Since a trust does not issue voting securities, under the rules it can be controlled by another entity only if the latter has a contractual power, under the trust indenture, to designate the trustee or, if there is more than one, a majority of the trustees." As Manager of [redacted] has the power to appoint successor Trustees, but only in the event that the incumbent Trustee wishes to retire. [redacted] has no power to remove the Trustee. On the other hand, the Trustee, under both unit trusts' deeds, does have the power to remove [redacted] as Manager if for good and sufficient reason the Trustee is of the opinion that a change of Manager is desirable in the interests of the Unit Holders; provided, that if the Manager is dissatisfied with such opinion the matter shall be referred to an arbitrator whose decision will be binding on both parties. As stated above, the Manager can also be removed by majority vote of the Unit Holders of either unit trust. In our opinion, [redacted] power as Manager to appoint successor Trustees under the unit trust deeds does not amount to "control" over the unit trusts because, on balance, [redacted] is in the weaker position in any conflict over management policy. Should any such conflict arise, either the Trustee or a majority of the Unit Holders can remove [redacted] from its position as Manager, but [redacted] has no corresponding power to remove the Trustee or any Unit Holders. We conclude, therefore, that [redacted] does not control [redacted], and that these unit trusts are not member entities of the [redacted]

13. Turning to the issues raised in paragraph 8 above, it is our opinion that [redacted] should not be deemed to hold any voting securities owned by [redacted] because [redacted] is not the "beneficial owner" of such securities within the meaning of 16 CFR §801.1(c)(1). Furthermore, [redacted] are not "collective investment funds" within the meaning of 12 CFR §9.18(a), and [redacted] is neither a bank nor a trust company; consequently, [redacted] should not be treated under the special provision of 16 CFR §801.1(c)(6) as holding assets or voting securities which constitute the trust corpus of either [redacted]

14. 16 CFR §801.1(c) defines the term "hold" to mean "beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means." As Investment Manager, [redacted] has the power to decide how [redacted] capital will be invested, the power to execute purchases and sales of investment securities in the names of [redacted] and the power to vote any securities owned by [redacted] and [redacted] For purposes of the United States Securities Exchange Act of 1934 (the "Exchange Act"), these powers are sufficient to cause [redacted] to be deemed the "beneficial owner" of securities owned by [redacted] (SEC Rule 13d-3, 17 CFR §240.13d-3). Under the Statement of Basis and Purpose, op. cit., at page 33459 the Federal Trade Commission and the Department of Justice have not adopted for purposes of the Act the Securities and Exchange Commission's formulation that beneficial ownership is equivalent to either voting power or dispositive power over securities. At page 33458, the Federal Trade Commission has identified several indicia of "beneficial ownership", including "the right to obtain the benefit of any increase in value or dividends, the risk of loss of value, the right to vote the stock or to determine who may vote the stock, the investment discretion (including the power to dispose of the stock)." [redacted] has no right to receive any increase in value or dividends from securities it manages on behalf of [redacted] nor does [redacted] bear any risk of loss or decrease in value of such

securities. In our opinion, MBUTM is not, therefore, a "beneficial owner" of [redacted] assets.

15. [redacted] both trusts, and we must therefore consider [redacted] position in light of the special provisions of 16 CFR §801.1(c)(3), (5) and (6). Under the general rule stated in 16 CFR §801.1(c)(3), most trusts are treated as holding exclusively any assets or securities which constitute trust corpus, while most trustees are not treated as holding such assets or securities.

16. There are three exceptions to 16 CFR §801.1(c)(3): (1) revocable trusts; (2) trusts in which the settlor has retained a reversionary interest; and (3) trusts which are "collective investment funds" within the meaning of 12 CFR §9.18(a). The first two exceptions treat the settlor as the holder of trust assets. Because [redacted] is not a settlor of [redacted] the first two exceptions are not relevant to our analysis.

17. The third exception applies to "collective investment funds", within the meaning of 12 CFR §9.18(a). Under 16 CFR §801.1(c)(6), "a bank or trust company which administers one or more collective investment funds shall hold all assets and voting securities constituting the corpus of each such fund." Although [redacted] could accurately be described as funds in which individual investors buy interests or units for the purposes of collective investment management, this description does not meet the technical definition of a "collective investment fund" within the meaning of 12 CFR §9.18(a). That regulation refers exclusively to funds held by a national bank as fiduciary and 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," or "(2) In a fund consisting solely of assets

of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code." [redacted] and [redacted] do not fall within the specialized classification of funds defined by 12 CFR §9.18(a), nor does [redacted] all within the classification of a national bank or trust company acting as a fiduciary. Where the Federal Trade Commission, in drafting 16 CFR §801.1(c)(3), has explicitly defined the term "collective investment fund" by reference to a section of the Federal banking regulations, it is our opinion that only the technical meaning of that term was intended to be used, and not a broader interpretation. Since [redacted] do not fit the technical classification of "collective investment funds," and [redacted] is not a bank or trust company, [redacted] should not be treated as holding [redacted] assets and voting securities under 16 CFR §801.1(c)(6).

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

19. [redacted] functions as an Investment Manager for [redacted] a unit trust organized under the laws of [redacted]. As [redacted]s status in relation to [redacted] is substantially similar to that of [redacted] in relation to [redacted] which is discussed above at paragraphs 9-17, it is our opinion that [redacted] is not the holder of any assets or voting securities owned by [redacted]

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

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

21. As a holding company, [redacted] holds for purposes of the Act any securities which are held by its controlled subsidiaries.

22. As an investment management company, [redacted] serves under written management agreements with three publicly-owned investment trust companies: (i) [redacted]. Despite their names, [redacted] no [redacted] trusts, but are organized as limited liability companies under the laws of [redacted] are managed by boards of directors which are elected by the holders of the voting shares issued by [redacted] and [redacted] respectively.

23. Under the management agreement between [redacted] and [redacted] has delegated to [redacted] subject to the direction and supervision of [redacted] board of directors, broad executive powers in relation to handling [redacted] investments, including the power to act for [redacted] to exercise the functions, duties, powers and discretions exercisable by the directors of [redacted] to manage the investment and reinvestment of [redacted] capital, and to carry out the general administration of [redacted] and [redacted] management agreements with [redacted] confer less extensive management powers than the agreement between [redacted] but [redacted] powers under the [redacted] contracts do include the buying and selling of investments and the execution of such other stock transactions, including the exercise of such discretions in connection therewith as the directors of [redacted] may from time to time require.

Although [redacted] exercises broad powers under its management contracts with [redacted] such powers are expressly subject to the directions of the boards of directors of [redacted] Any of [redacted] individual management decisions can be overruled by intervention of the boards of directors, and each of [redacted] contracts as manager of [redacted] can be terminated entirely with one year's notice in each case.

24. Under 16 CFR §801.1(b), [redacted] would be treated as having "control" over [redacted] if [redacted] holds 50% or more of the outstanding voting securities of any of such companies, or if [redacted] a contractual power presently to designate a majority of the directors of any of such companies. As stated above in paragraph 22, [redacted] are all publicly-owned companies, and [redacted] does not hold 50% or more of the outstanding voting securities issued by any of them. [redacted] management powers described in paragraph 22 above do not include the power to designate a majority of the directors of [redacted] 16 CFR §801.1(b) does not include any provision for a broader interpretation of the term "control", and the Statement of Basis and Purpose, op. cit. at page 33457, indicates that a previous draft of section 801.1(b), which attempted to identify "actual or working control, however effected," was rejected partly in response to comments asserting that the proposed test, as applied to mutual funds, would have regarded an investment adviser that advises several separate mutual funds as controlling the funds. The regulation as finally promulgated was based on the stated objective that "All parties should be able to determine their obligations with reasonable certainty based on objective criteria." Also, according to its authors, the final form of the regulation "eliminated the criticism in the comments on the mutual fund issue." Ibid, at page 33458. It would appear that the authors of 16 CFR §801.1(b) intended that working management powers such as those exercised by [redacted] on behalf of [redacted] should not be considered in determining whether or not one entity has "control" over another,

and such a determination should be made exclusively on the basis of the objective criteria of voting control or a contractual power to designate the directors. Since the objective criteria of 16 CFR §801.1(b) are not satisfied in this instance, it is our opinion that [redacted] does not have "control" over [redacted] and none of those three companies can be considered members of the [redacted] for purposes of the Act.

25. In our opinion, [redacted] should not be deemed to "hold" voting securities owned by [redacted] and [redacted] which [redacted] manages on behalf of those companies, because [redacted] is not the "beneficial owner" of such voting securities within the meaning of 16 CFR §801.1(c)(1). [redacted] has no rights to receive any increase in value or dividends from such securities, nor does [redacted] bear any risk of loss of value from its investment decisions. As discussed in paragraph 14 above in relation to [redacted] powers to buy, sell and vote securities in [redacted] discretion are not equivalent to "beneficial ownership" as that term is used in 16 CFR §801.1(c).

26. [redacted] functions as investment manager for [redacted], a pension unit trust organized under the laws of [redacted]. [redacted] position as investment manager of [redacted] is somewhat different from the position of [redacted] in relation to the unit trusts managed by them. Under [redacted] Trust Deed, the principal power to manage the unit trust's assets is held by a trust Committee, while the Trustee has a veto power over the Committee's management decisions. The Committee of [redacted] is bound by the Trust Deed to appoint an Investment Manager, and, following this mandate, the Committee of [redacted] has appointed [redacted] as Investment Manager. As Investment Manager, [redacted] determines how the assets of [redacted] will be invested, [redacted] purchases and sells investments owned by [redacted] on its behalf, [redacted] votes any voting securities owned by [redacted] has authority to sign contracts and other documents which are legally binding upon [redacted]. However, [redacted] serves as Investment Manager of [redacted] by

appointment, and [redacted] could be dismissed by [redacted] Committee at any time. As mentioned in paragraph 12 above in the discussion relating to [redacted] a trust can be controlled by another entity only if the latter has a contractual power, under the trust indenture, to designate the trustee or, if there is more than one, a majority of the trustees. [redacted] has no such contractual right nor any other means of controlling the election, appointment or replacement of the Trustee or the Committee of [redacted] Therefore, in our opinion, [redacted] does not have "control" over [redacted] within the meaning of 16 CFR §801.1(b), and it follows that [redacted] is not a member entity of the [redacted]

27. [redacted] management powers in relation to securities owned by [redacted] are substantially similar to [redacted] management powers over securities owned by [redacted] and [redacted] described in paragraph 14 above. Therefore, in our opinion, [redacted] is not the "holder" for purposes of the Act of assets or voting securities owned by [redacted] for the same reasons as those set out in paragraphs 14-17 above in relation to [redacted]

28. [redacted] also serves as an investment manager to a variety of individuals and corporate clients who have established investment portfolio accounts with [redacted] As a service to some of its account clients, [redacted] exercises investment discretionary powers over such accounts, including the power to purchase and dispose of securities and the power to vote such securities. [redacted] has no right to receive any increase in value or dividends from any of the securities held in its clients' accounts, and [redacted] bears no risk of loss of value of such securities. Therefore, for the same reasons set out in paragraph 14 above in our discussion of the meaning of the term "beneficial ownership" in relation to [redacted] it is our opinion that [redacted] not the "beneficial owner" of any assets or voting securities held in its clients' discretionary accounts, and [redacted] not the "holder" of such assets or voting securities for purposes of the Act.

29. [redacted] status in relation to securities held in non-discretionary portfolio accounts is similar to that described in the example following 16 CFR §801.1(c) of a stockbroker who holds stock in "street name" for the account of a natural person. With respect to non-discretionary accounts, [redacted] merely purchases and sells securities through stock exchange members and acts as custodian, all on the instructions of the non-discretionary account clients. Therefore, in our opinion, [redacted] is not the "holder" of voting securities stock held in such accounts for purposes of the Act.

30. [redacted] acts as an investment advisor to several investment management companies, including [redacted] and [redacted], a [redacted] corporation which manages [redacted] a unit trust organized under the laws of [redacted] Under the Advisory Agreement between [redacted] and [redacted] (the "[redacted] Agreement"), [redacted] provides investment advice to [redacted] but does not have the power to enter into transactions on behalf of or to make commitments which are binding on [redacted] as principal parties. Although the [redacted] Advisory Agreement does not empower [redacted] to exercise investment discretionary powers on [redacted] behalf, [redacted] and [redacted] have informally authorized [redacted] to exercise such powers, including purchases, dispositions and voting of securities owned by [redacted] This informal authorization could be revoked at any time, and, in practice, [redacted] seeks specific instructions from [redacted] with respect to all significant purchases, dispositions and votes of securities owned by [redacted] As investment advisor, [redacted] has no right to receive dividends or proceeds of sales of voting securities. In our opinion, [redacted] authority to buy, sell and vote securities owned by [redacted] only for so long as authorized by [redacted] does not constitute "beneficial ownership" of such securities, for the same reasons set out in paragraph 14 above in the discussion relating to [redacted] and it follows that [redacted] is not the "holder" for purposes of the Act, of assets and voting securities managed by [redacted]

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

32. [redacted] serves as investment advisor to [redacted] but this relationship has not been formalized by a written agreement. The relationship is, in practice, substantially similar to [redacted] advisory relationships with [redacted] Therefore, in our opinion, [redacted] is not the "holder" of assets and voting securities managed by [redacted] for the same reasons set out in paragraph 30 above in the discussion relating to the [redacted] Advisory Agreement.

33. Confirmation of the legal points raised above is important to the members of the [redacted] because of the aggregate value of investments in securities issued by United States companies which the [redacted] manages for the Investors. It is not uncommon for the Investors under [redacted] management to own in the aggregate more than five per cent (5%) of the voting securities of United States issuers, and, because their holdings are aggregated for Exchange Act purposes, the [redacted] and the Investors under its management have been required to file with the SEC statements on Schedule 13D with respect to such holdings.

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

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

management companies would be required to aggregate the holdings of funds or clients under management with their own holdings for purposes of determining whether the requirements of the Act apply to an acquisition. As we discussed and as indicated in this letter, the [redacted] structure and client relationships are quite complex, and in view of this complexity, we agreed that a written statement of the facts and legal analysis, with your concurrence, would best enable our clients to determine with reasonable certainty their obligations under the Act. Please confirm whether or not you agree with the general opinions expressed in paragraphs 7 and 8 above, as well as the specific opinions expressed in paragraphs 11, 12, 13, 14, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31 and 32, on the basis of the facts presented.

36. In the event that this letter or your response is published, please have the names deleted to preserve our clients' confidentiality.

Sincerely,

[redacted]

[redacted]

Enc.

On 6/3/87 I notified [redacted] that I did not know enough to dispute his conclusions and that this does not bind either agency in any future transaction. We will send us a letter to confirm that conversation

W C Kaplan