

PUBLIC

1 NOV 1994

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-345-CC
Wm. S. Barnickel &
Company
File No. 132-3

Your letter of June 8, 1994 requests our assurance that we would not recommend enforcement action to the Commission if, as more fully described in your letter, (1) Wm. S. Barnickel & Company (the "Company") and the William S. Barnickel Trust (the "Trust") include only the transferors of certain interests in the Trust, and not the recipients of those interests, in determining the number of beneficial owners of the Company and the Trust for purposes of Section 3(c)(1) of the Investment Company Act of 1940 (the "1940 Act"); and (2) the Company disregards two trusts established for the benefit of various members of the Lehmann family (the "Lehmann Trusts") for purposes of determining the number of beneficial owners of the Company.

You state that the majority of the Company's assets consists of a substantial block of shares of a publicly traded corporation. The Company has three shareholders -- the Trust and the two Lehmann Trusts. The Trust owns 90% of the common stock of the Company, which is the Trust's sole asset. The Lehmann Trusts collectively own the remaining 10% of the Company's common stock. You state that certain of the Trust's beneficial owners have transferred their interests in the Trust by will, or by donation to a charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 ("Charitable Organization"), and that others may do so in the future.

You ask the staff to confirm that the Trust and the Company, respectively, may include only the transferors of interests by will or by donation to Charitable Organizations, and not the recipients of those interests, for purposes of calculating the number of beneficial owners under Section 3(c)(1). The staff has stated previously that it would not recommend enforcement action if a company treated persons receiving shares by operation of will and their testator as a single beneficial owner for purposes of Section 3(c)(1). 1/ Similarly, the staff agreed not to recommend enforcement action when the same company proposed to treat a donor to Charitable Organizations and the recipients of the donated shares as a single beneficial owner. 2/

1/ Commodities Corporation (pub. avail. June 7, 1991).

2/ Id. Of course, a sale to any person or a gift to a person other than a Charitable Organization would not be treated as an involuntary transfer, and the transferees would have to be counted as beneficial owners for purposes of Section 3(c)(1).

You also ask whether the Company and the Trust can apply this principle to transfers that occurred before 1980. In 1980, Congress adopted Section 3(c)(1)(B) of the 1940 Act which authorized the Commission to adopt rules to address situations where an issuer that is not making and does not intend to make a public offering "may have outstanding securities beneficially owned by more than one hundred persons simply because of transfers which are neither within the issuer's control nor are voluntary on the part of the present beneficial holder." 3/ Congress stated in enacting Section 3(c)(1)(B) that barring the issuer from relying on Section 3(c)(1) when involuntary transfers of interests have occurred and when the issuer has never publicly offered its securities would not further the purposes of the 1940 Act. 4/ We believe that it would be consistent with the purposes of Section 3(c)(1) if the Company counts only the transferors of interests by will or by charitable donation, and not the recipients of those interests, for transfers that occurred both prior to and subsequent to the adoption of Section 3(c)(1)(B).

You also ask whether the Company can disregard the Lehmann Trusts for purposes of counting the number of its beneficial owners because all of the beneficiaries of the Lehmann Trusts are also beneficiaries of the Trust. The staff has previously stated that for purposes of the 100-investor limit in Section 3(c)(1), companies may avoid double counting of beneficial owners, because "[t]he relevant inquiry . . . is whether ultimately there are 100 or fewer individuals who have an economic interest in the investment company." 5/ Consistent with this position, the staff would not object if the Company counts individual beneficiaries of its shareholder trusts once, even if an individual owns interests in more than one trust.

Accordingly, we would not recommend enforcement action to the Commission, if, as described above, the Company and the Trust count only the transferors of interests by will or by donation to Charitable Organizations, and not the recipients of those interests, as beneficial owners for purposes of Section 3(c)(1). Further, we believe that the Company may disregard the two Lehmann Trusts and treat each beneficial owner of the Trust and the Lehmann Trusts as a single holder of the Company's

3/ H.R. Rep. No. 1341, 96th Cong., 2d Sess. 36 (1980).

4/ Id.

5/ Nemo Capital Partners, L.P. (pub. avail. July 28, 1992).

outstanding securities. This position is based on the facts and representations in your letter; any different facts or representations may require a different conclusion.

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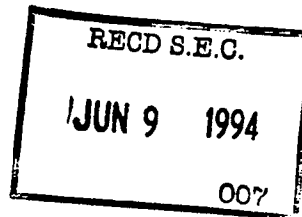
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June 8, 1994



Investment Company Act of 1940/
Section 3(c)(1)

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

Date	1940 Act
Section	3(c)(1)
File	
Public	
Availability	11-1-94

Re: Wm. S. Barnickel & Company; William S. Barnickel Testamentary Trust

Ladies and Gentlemen:

This letter is submitted on behalf of our clients, Wm. S. Barnickel & Company, a Missouri corporation (the "Company"), and the William S. Barnickel Trust, a Missouri testamentary trust (the "Trust"). We respectfully request a determination, based on the facts set forth herein, that the staff of the Division of Investment Management (the "Staff") will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") under the Investment Company Act of 1940, as amended (the "1940 Act"), in the circumstances described below and in accordance with Section 3(c)(1) of the 1940 Act, if:

- (1) The Company and the Trust continue to treat beneficial ownership of all of the interests in the Trust as beneficial ownership by one person, except for interests which were acquired by "voluntary" transfer, for purposes of calculating the current number of beneficial owners of the Company and the Trust. Alternatively, if the Staff does not agree with this view, we respectfully request confirmation that the Staff will not recommend any enforcement action if only those new, post-1979 beneficiaries of the Trust who received their interests in "voluntary" transfers are added to the number of beneficial owners at the end of 1979 for purposes of calculating the current number of beneficial owners of the Company and the Trust.
- (2) The Company disregards the Lehmann Trusts (as defined below) for purposes of counting the number of beneficial owners of the Company,

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since all of the beneficiaries of the Lehmann Trusts are also beneficiaries of the Trust.

- (3) The Company and the Trust continue to treat beneficial ownership of interests in the Trust which are subsequently transferred by will, or otherwise by reason of death, as beneficial ownership, in each case, by one person, for purposes of determining the total number of beneficial owners of the Company and the Trust.
- (4) The Company and the Trust continue to treat beneficial ownership of interests in the Trust which are subsequently donated to Public Charities (as defined below) as beneficial ownership, in each case, by one person, for purposes of determining the total number of beneficial owners of the Company and the Trust.

Background

The Trust was formed in 1923 pursuant to the Last Will and Testament of Williams S. Barnickel dated August 1, 1921 (the "Will"), wherein Mr. Barnickel established a trust covering all his real and personal property for the benefit of certain beneficiaries. The Will provided for self-perpetuating trustees and stated that the trust would terminate upon the death of his daughter.

At the time of execution of the Will, the Company was organized in the form of a partnership in which Mr. Barnickel had a 9/10 interest and John S. Lehmann had a 1/10 interest. However, the Will authorized the trustees to incorporate the partnership business at their discretion. The partnership was incorporated as The Pacedo Corporation on March 22, 1922 and changed its name to Wm. S. Barnickel & Company on May 22, 1923. Today, the assets of the Trust consist solely of 7,920 shares (90%) of the common stock of the Company and are managed by a corporate trust company and an individual as co-trustees of the Trust. The remaining 880 shares are held by the same trust company as trustee of two trusts for the benefit of various members of the Lehmann family (the "Lehmann Trusts"). The two Lehmann Trusts were created pursuant to the Indenture of Trust of John S. Lehmann dated July 8, 1959. On the death of the sole income beneficiary, the John S. Lehmann Trust was divided into two separate unequal shares: 3/4 to be held in further trust for a son, and 1/4 to be held in trust for a nephew. Based on the circumstances of these individuals, the Lehmann Trusts both call for

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eventual distribution of the assets to the children of the nephew. These children, like the son and nephew, are also beneficiaries of the Trust.

The assets of the Company consist primarily of a substantial block of shares of common stock of a publicly traded corporation, which represent a substantial majority of the value of the Company's assets. The remaining assets consist of oil and gas interests, a diverse portfolio of publicly traded securities and temporary cash equivalents.

Mr. Barnickel's Will provided that 1/3 of the income from the Trust was to be paid to his daughter, during her life; 1/6 to one of his sisters, during her life; 1/6 to his other sister, during her life; and 1/3 to be divided among a number of other individuals or their heirs. Pursuant to the terms of the Will, the income otherwise payable to his sisters became payable to his daughter, upon their deaths. Upon the death of his daughter, the income otherwise payable to her was to be paid to her children until the youngest of her children reached age 21, at which point the Trust was to cease, and the estate divided among the children. Mr. Barnickel's daughter recently died. As her children had already reached age 21, the Trust is now required to terminate and its assets distributed. Distribution of the assets may not take place for some time, however, as the trustees of the Trust are addressing and seeking to resolve a number of business, tax and other concerns.

The remainder beneficiaries of the 2/3 interest of the daughter are her four children. The beneficiaries of the remaining 1/3 interest are 91 other individuals receiving income distributions from such 1/3 interest. Most of these individuals currently receiving Trust income received their interest through intestate or testate succession. However, a small number of these individuals received their interests through sales of trust income interests by previous beneficiaries.

Certain holders of interests in the Trust want to transfer their interests in circumstances that may result in the Trust, and therefore the Company, having more than 100 beneficial owners. First, a number of holders wish to transfer their interests by will. Second, certain holders may want to donate shares to organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 ("Public Charities"). Third, other holders wish to transfer their interests by gift or in a sale transaction. In each of the first two instances, the Company and the Trust wish to confirm that they may treat a donating or transferring beneficial owner and his or her multiple donees or transferees of interests in the Trust as one beneficial owner of securities for purposes of the 100 beneficial owner rule contained in Section 3(c)(1) of the 1940 Act. Additionally, we also wish to confirm that the Trust and the Company may rely on the application of the "involuntary transfer" rule contained in Section 3(c)(1)(B) of the

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1940 Act in calculating the number of beneficial owners of the Company and the Trust, in order to ensure continued qualification as a "private investment company" following a gift or sale transaction.

Discussion

It is our view that both the Company and the Trust would qualify for the "private investment company" exception under the 1940 Act by virtue of having fewer than 101 beneficial owners. Further, it is our view that, by virtue of the "involuntary transfer" rule contained in Section 3(c)(1)(B) of the 1940 Act, there are currently fewer than 30 beneficial owners of the Trust, and no beneficial owners counted for the two Lehmann Trusts, making a total of fewer than 30 beneficial owners of the Company for purposes of the 100 beneficial owner rule. Alternatively, if the "involuntary transfer" rule is determined only to apply beginning in 1980 (i.e., the effective date of Section 3(c)(1)(B)), it is our view that there are only 63 beneficial owners of the Trust, and no beneficial owners counted for the two Lehmann Trusts, making a total of 63 beneficial owners of the Company for purposes of the 100 beneficial owner rule. Additionally, it is our view that any future transfers by will or to Public Charities need not be "counted" for purposes of complying with the 100 beneficial owner limit.

A. *Investment Companies – Generally.* We have assumed, for purposes of this letter, that both the Company and the Trust constitute "investment companies" for purposes of the 1940 Act. The Company holds a substantial block of shares of the common stock of a publicly traded company, which represent a substantial majority of the value of the Company's assets. The remaining assets consist of oil and gas interests, a diverse portfolio of publicly traded securities and temporary cash equivalents. The Trust holds 7,920 shares (90%) of the common stock of the Company. Section 3(a) of the 1940 Act defines the term "investment company" to mean any issuer which:

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; or

...

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive

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of Government securities and cash items) on an unconsolidated basis.

Section 3(a) also defines the term "investment securities" to mean all securities except "(A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies." We have assumed, for purposes of this letter, that the common stock of the Company and the interests of beneficiaries in the Trust constitute "securities".

B. Private Investment Company. The "private investment company" exception is contained in Section 3(c)(1)(A) of the 1940 Act, and imposes only two requirements: first, that the issuer's securities may not be beneficially owned by more than 100 persons and, second, that the issuer may not be making or contemplating a public offering of securities.

Currently, three trusts together hold 100% of the common stock of the Company. The Trust holds 90% of the common stock. The two Lehmann Trusts hold 7 1/2% and 2 1/2% stakes, respectively, in the Company. All the beneficiaries of the Lehmann Trusts are also beneficiaries of the Trust. Generally, an entity that holds an ownership interest in a company that is subject to the 100 beneficial owner test of the 1940 Act will itself be counted as the direct beneficial owner of the company, rather than the individuals holding ownership interests in the entity. However, paragraph (A) of Section 3(c)(1) contains an "attribution" provision, pursuant to which a private investment company is required to count as beneficial owners of its securities the holders of securities (other than short-term paper) of any entity which owns 10% or more of the voting securities of the private investment company. The attribution rule, though, is not applied if the value of all securities owned by the entity covered by the attribution provisions does not exceed 10% of the assets of such entity.^{1/}

^{1/} Cf. *Nemo Capital Partners, L.P.* (July 28, 1992) (permitting counting of individuals rather than multiple trusts with overlapping, although not identical, beneficiaries, stating "the relevant inquiry is whether ultimately there are 100 or fewer beneficiaries who have an economic interest in the investment company") and *Handy Place Investment Partnership* (July 19, 1989) (noting possibility that partnership formed for purpose of investment would be looked through for purpose of counting individual partners as beneficial owners).

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We have assumed that the Trust, which holds a 90% interest in the Company, will be subject to the attribution rule and thus each beneficiary will be counted in the 100 beneficial owner calculation. If the "involuntary transfer" rule (described below) does not apply, there would currently be 98 beneficiaries under the Trust. Since all the beneficiaries of the Lehmann Trusts are beneficiaries of the Trust, it is our view, as discussed in Section D below, that no beneficiaries would be counted for the two Lehmann Trusts, making a total of 98 beneficial owners of the Company for purposes of the 100 beneficial owner rule. If the "involuntary transfer" rule does apply, there would currently be fewer than 30 beneficial owners of the Trust and no beneficial owners of the two Lehmann Trusts, making a total of fewer than 30 beneficial owners of the Company for purposes of the 100 beneficial owner rule. Alternatively, if the "involuntary transfer" rule is determined only to apply beginning in 1980, it is our view that there would currently only be 63 beneficial owners under the Trust and no beneficial owners counted for the two Lehmann Trusts, making a total of 63 beneficial owners of the Company for purposes of the 100 beneficial owner rule.

C. Involuntary Transfer Exception. In 1980, Congress amended Section 3(c)(1) in order to provide an exception for the calculation of the number of "beneficial owners" in the case of certain "involuntary transfers." The exception appears in paragraph (B) of Section 3(c)(1), as follows:

Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

The House drafted the amendment to aid an "investment company which is not making and does not presently propose to make a public offering of its securities [but] may have its outstanding securities beneficially owned by more than 100 persons simply because of transfers which are neither within the issuer's control nor are voluntary on the part of the present beneficial holder." H.R. Rep. No. 1341, 96th Cong, 2d Sess., at 36-37 (1980), *reprinted in* 1980 U.S.C.A.N. (94 Stat.) 4800, 4818-19.

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Although the Commission has not adopted any rules pursuant to Section 3(c)(1)(B), the Division of Investment Management has issued two no-action letters indicating that the "involuntary transfer" doctrine may be invoked in order to disregard such transfers. In *Commodities Corporation* (June 7, 1991), the Staff took a no-action position with respect to the treatment of persons receiving securities of an issuer by operation of will and their testator as a single shareholder. Additionally, the staff took a no-action position with respect to the treatment of Public Charities receiving securities of an issuer and their donating shareholder as a single shareholder. Similarly, in *Boston Ventures Limited Partnership* (August 5, 1992), the Staff took a no-action position with respect to including only the number of transferors of certain limited partnership interests, and not the number of recipients, in counting the total number of beneficial owners for purposes of the 1940 Act. In that case, the deaths of two individuals resulted in the termination of two partnerships that, in turn, distributed the interests to multiple beneficiaries. In both letters, the Staff acknowledged that the Commission has not adopted any rules under Section 3(c)(1)(B) but proceeded to grant no-action relief on the basis that it would be consistent with the Congressional intent for the issuers to continue to include only the number of transferors in calculating the number of beneficial owners (and disregard the number of transferees). Compare *Trivest Special Situations Fund 1985, L.P.* (July 13, 1989) (rejecting request to disregard the termination of a pension plan due to changes in its tax treatment under the Internal Revenue Code and the resulting distribution of securities of the issuer, where termination was deemed not involuntary simply because it became economically disadvantageous).

In the case of the Trust, substantially all the beneficiaries of the Trust have received their interests by means of intestate or testate succession, i.e., as a result of the death of the predecessor beneficiary. Although many of the holders received their interests prior to the effective date of Section 3(c)(1)(B) in 1980, there appears to be no policy reason for requiring the Company and the Trust to count those holders who received their interests through involuntary transfer simply because the transfers took place prior to the effective date of paragraph (B) of Section 3(c)(1). In adopting this provision, Congress recognized that certain types of involuntary transfers of securities in which an issuer was not involved or had no control should not cause an issuer relying on the Section 3(c)(1) exemption to be subject to the 1940 Act. Accordingly, in order to ensure continued qualification as a "private investment company" following a gift or sale transaction, we respectfully request assurance that the Staff will not recommend any enforcement action to the Commission if the Company and the Trust continue to treat beneficial ownership of the interests in the Trust as beneficial ownership by one person, except for interests which were acquired by voluntary transfer. On this basis, the Company and the Trust would currently have fewer than 30 beneficial owners for purposes of the 100 beneficial owner rule.

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Alternatively, if the Staff does not agree with this view, in order to ensure continued qualification as a "private investment company" following a gift or sale transaction, we respectfully request assurance that the Staff will not recommend any enforcement action to the Commission if only those new, post-1979 beneficiaries who received their interests in "voluntary" transfers are added to the number of beneficiaries at the end of 1979 in applying the 100 person rule. At the end of 1979, there were 54 different individuals with a beneficial interest in the Trust. Due to subsequent transfers and splitting of Trust interests through intestate succession, testate succession and sales of interests, there are currently 98 beneficial owners of the Trust. As a result of the application of the "involuntary transfer" rule, however, there were only nine additional beneficiaries added, making a total of 63 beneficial owners of the Trust for purposes of the 100 beneficial owner rule.

D. The Lehmann Trusts. As noted above, the Company has three shareholders: the Trust and the two Lehmann Trusts. The trustee of each of the Lehmann Trusts is the same corporate trust company, which is also one of the two co-trustees of the Trust. If the two Lehmann Trusts were treated as one beneficial owner, then they would become a 10% beneficial owner as to which the "attribution" rules of Section 3(c)(1) would apply. Although the Staff has indicated that the aggregation of trusts with the same trustee need only take place in "special circumstances",^{2/} it is our view that the Lehmann Trusts should be disregarded for

^{2/} In *OSIRIS Management, Inc.* (January 18, 1984) the Staff indicated that the fact that two trusts have the same trustee does not necessarily mean that the trusts will be deemed to be one beneficial owner. OSIRIS was an investment partnership with several trusts as limited partners. OSIRIS sought an interpretative letter whether those trusts with a common trustee would be counted as a single "client" of the general partner for purposes of Section 203(b)(3) of the Investment Advisers Act of 1940. The Staff found that "[t]he fact that two or more trusts have the same trustee would not, of itself, cause us to treat the trustee as the client."

In addressing the issue of the status of the trusts under the 1940 Act, an issue not raised by OSIRIS, the Staff stated that for purposes of Section 3(c)(1), "[i]n the absence of special circumstances, such as where two or more trusts have identical beneficiaries, we would count each trust as one beneficial owner even though the same bank serves as trustee for more than one trust." The OSIRIS letter has been subsequently cited for the proposition that only trusts with identical beneficiaries or trusts which own more than 10% of an issuers securities will be subject to the look-through rules. *Tyler Capital Fund, L.P./Bessemer Limited Partners* (August 28, 1987); *Rosenberg Capital*

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purposes of counting the number of beneficial owners of the Company since all the beneficiaries of the Lehmann Trusts are also beneficiaries of the Trust.

In a recent letter, *Nemo Capital Partners, L.P.* (July '28, 1992), the Staff supported a broad interpretation of the scope of the attribution rule to avoid double-counting of investors. The Staff stated that in applying the 100 beneficial owner rule to intermediary entities which have less than a 10% voting share of the investing entity and which have overlapping but not identical beneficiaries, the attribution rule may be applied to avoid double-counting the ultimate beneficial owners of the intermediary entity. In *Nemo*, 23 individuals held interests in the investing entity through 85 trusts. There was a considerable amount of overlap of beneficiaries of the trusts, but there was no exact duplication. Moreover, none of the trusts owned or would in the future own 10% or more of *Nemo*. Nonetheless, the Staff looked through the trust entities and counted the unduplicated number of individual beneficiaries holding an interest in the *Nemo* partnership. The Staff stated that:

[a]lthough some Trusts have overlapping and not identical beneficiaries, we also believe that *Nemo* would be double counting if it treated each Trust as a separate security holder. The relevant inquiry in these circumstances is whether ultimately there are 100 or fewer individuals who have an economic interest in the investment company. . . . we believe that, for purposes of determining its status under Section 3(c)(1), *Nemo* need not count each Trust as a separate security holder; instead it may count only the total number of individuals who have a beneficial interest in *Nemo* either directly or indirectly through the Trusts.

Applying the attribution rule to the *Nemo* partnership was advantageous to the investors since it decreased the number of beneficial owners from 85, which was the number of owners that resulted from counting each individual trust as a beneficial owner.

In the case of the Lehmann Trusts, it is our view that the *Nemo* letter should be applied as it would avoid double counting of beneficiaries. In *Handy Place Investment Partnership* (July 19, 1989), the Staff noted that, although no inquiry was made as to double-counting of an individual participating both directly and indirectly in a partnership investment vehicle, "[t]he degree of public interest in a fund relying on Section 3(c)(1) is gauged by the

Management (February 18, 1979); and *Handy Place Investment Partnership* (July 19, 1989).

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number of investors that have an economic interest in and will be affected by its performance." The application of that principle to the Lehmann Trusts would reduce the risk of unwarranted classification of the Company as an investment company, since all the beneficiaries of the Lehmann Trusts are also beneficiaries of the Trust. Accordingly, in order to ensure continued qualification as a "private investment company" following a gift or sale transaction, we respectfully request assurance that the Staff will not recommend any enforcement action to the Commission if the Company disregards the Lehmann Trusts for purposes of counting the number of beneficial owners of the Company, so that the Company and the Trust are deemed to have the same number of beneficial owners.

E. Proposed Transfers. Certain holders of interests in the Trust want to transfer their interests in circumstances that may result in the Trust, and therefore the Company, having more than 100 beneficial owners. First, a number of holders wish to hold their interests until death. A number of holders may, in planning their estates, wish to bequeath their interests to surviving family members or others. Such transfers would only occur upon the death of such holders, would not benefit the Company or the Trust at all, and therefore appear to be covered by the "involuntary transfer" rule. We respectfully request assurance that the Staff will not recommend any enforcement action to the Commission with respect to the Company or the Trust by virtue of their continuing to treat beneficial ownership of each of the interests formerly owned by the deceased holders as beneficial ownership in each case by one person, for the purpose of determining the number of beneficial holders of the Company and the Trust. We believe this request is consistent with the policy underlying Section 3(c)(1)(B), as well as the positions of the Staff in *Commodities Corporation, supra*, and *Boston Ventures Limited Partnership, supra*.

Second, certain holders may want to donate interests in the Trust to Public Charities. As discussed in *Commodities Corporation*, while such transfers are voluntary on the part of the holders, we believe the public policy supporting charitable organizations merits treating donations to the Public Charities in the same manner that Congress contemplated for transfers of property by operation of will under Section 3(c)(1)(B). We respectfully request assurance that the Staff will not recommend any enforcement action to the Commission with respect to the Company or the Trust by virtue of their continuing to treat beneficial ownership of each of the interests formerly owned by the donors as beneficial ownership in each case by one person, for the purpose of determining the number of beneficial holders of the Company and the Trust.

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Conclusion

We respectfully request that the Staff concur with our views expressed herein and provide a no-action letter covering the matters discussed herein.

If for any reason the Staff does not agree with our position, we respectfully request an opportunity to discuss the matter with the Staff prior to any written response to this letter. If you have any questions or require additional information, please call the undersigned at (314) 259-2149.

In accordance with Investment Company Act Release No. 6330 (January 25, 1971), we have enclosed for filing two additional copies of this letter. An additional copy of this letter is enclosed, which we request that you stamp and return to the messenger to evidence your receipt of this filing and its attachments.

Respectfully submitted,

A handwritten signature in black ink, consisting of the letters 'R', 'R', and 'W' followed by a stylized flourish.

R. Randall Wang

RRW/lmm

Enclosures