

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

August 31, 1998
Our Ref. No. 98-510-CC
Zurich Insurance Company;
Scudder Kemper Investments, Inc.
File No. 801-252

Your letter dated August 26, 1998 requests our concurrence that Scudder Kemper Investments, Inc. ("Scudder Kemper") may rely on Rule 202(a)(1)-1 under the Investment Advisers Act of 1940 (the "Advisers Act") and Rule 2a-6 under the Investment Company Act of 1940 (the "Investment Company Act") to determine whether an "assignment" will occur for purposes of Section 205(a)(2) of the Advisers Act and Section 15(a)(4) of the Investment Company Act, in connection with the reorganization transaction described in your letter.¹

Facts

You state that Scudder Kemper, a Delaware corporation that is registered as an investment adviser under the Advisers Act, acts as investment adviser to registered investment companies ("Funds") and other advisory clients ("Advisory Clients"). Zurich Insurance Company ("Zurich") is a Swiss corporation engaged in various financial services businesses including insurance and asset management. Zurich, through its subsidiaries, owns approximately 70% of Scudder Kemper's outstanding voting securities, and the officers and employees of Scudder Kemper own the remaining 30%. B.A.T. Industries p.l.c. ("B.A.T.") is a U.K. corporation engaged in various financial and non-financial related businesses. Zurich has entered into a merger agreement with B.A.T. (the "Transaction"), pursuant to which Zurich and B.A.T. will combine their financial services businesses through a new holding company, Zurich Financial Services ("ZFS"). Zurich and B.A.T. shareholders will in turn own ZFS through interests in dual public holding companies with a unified governance structure.

You state that the Transaction will be effected as follows. Zurich intends to establish a new holding company, Zurich Allied AG ("Zurich Allied"), which will conduct a public exchange offer for shares of Zurich. As a result of the exchange offer, current shareholders of Zurich will become shareholders of Zurich Allied. Zurich Allied will then contribute all of the Zurich shares received in the exchange offer to ZFS. In return, Zurich Allied will receive approximately 57% of the outstanding voting securities of ZFS. B.A.T. also will establish a new holding company,

¹ You state that, as a precautionary measure, Zurich Insurance Company and Scudder Kemper have applied to the Commission for an exemptive order to permit Scudder Kemper to continue to serve as investment adviser to the registered investment companies advised by Scudder Kemper for up to 150 days following consummation of the transaction, and thus may not need to rely on Rule 2a-6. See Zurich Insurance Company, Investment Company Act Release No. 23389 (Aug. 14, 1998) (notice). You nevertheless request our concurrence that Rule 2a-6 would be available in connection with the transaction.

Allied Zurich p.l.c. ("Allied Zurich"), the shares of which will be distributed to current B.A.T. shareholders. Allied Zurich will then transfer B.A.T.'s financial services businesses to ZFS in exchange for the remaining 43% of the outstanding voting securities of ZFS. ZFS thus will directly or indirectly hold all of the financial services businesses of both Zurich and B.A.T. You state that to your knowledge, no individual shareholder currently owns 5% or more of the outstanding voting securities of Zurich or B.A.T, and that following the Transaction, no individual shareholder will own 5% or more of the outstanding voting securities of Zurich Allied or Allied Zurich, or otherwise constitute a "control" person of either company.

You state that upon the closing of the Transaction, Zurich Allied and Allied Zurich will enter into a Governing Agreement. The purpose of the Governing Agreement is to achieve a unified governance structure for the entire ZFS group, which will replicate the effect of a direct merger of the financial services businesses of Zurich and B.A.T. Zurich Allied and Allied Zurich will be restricted from engaging in any business operations other than owning shares of ZFS. ZFS, Zurich Allied and Allied Zurich initially will have three separate boards of directors with certain common members. The Governing Agreement provides that the companies will use their best efforts to assure that the membership of the three boards converge as soon as possible. Zurich will designate five of the ten initial directors of ZFS, and B.A.T. will designate the other five directors. Zurich's current Chief Executive Officer will become CEO and Chairman of the Board of ZFS, with the ability to cast a tie-breaking vote on most matters.

You state that the Transaction will not result in a change of actual control or management of Scudder Kemper. Allied Zurich will have no right to direct the day-to-day management of ZFS or its subsidiaries, including Scudder Kemper, and Zurich has represented to the boards of directors of the Funds that Allied Zurich believes that the consummation of the Transaction will not result in any change in the management or governance of the U.S. investment advisory businesses of Scudder Kemper. In addition, you note that Allied Zurich will abstain from voting on the designation of any members to the Board of Directors or Executive Committee of Scudder Kemper that is submitted to ZFS for approval. Lastly, you state that Scudder Kemper's CEO is expected to continue to be a member of Zurich's Corporate Executive Board with responsibility for asset management, and is expected to be a member of ZFS' Group Management Board with responsibility for asset management.

You state that the primary business objective of the Transaction is not a combination of the asset management business of Scudder Kemper with B.A.T. You note that at the time the agreement in principle relating to the Transaction was announced, Zurich's acquisition of its interest in Scudder Kemper had not been consummated. You represent that you do not expect any material change in the level of investment advisory services provided or the fees charged by Scudder Kemper as a result of the Transaction. You also state that the officers and employees of

Scudder Kemper will continue to own in the aggregate approximately 30% of Scudder Kemper's voting securities after the Transaction. You note that governance arrangements were put in place at the time of Zurich's acquisition of its interest in Scudder Kemper that preclude certain major decisions affecting Scudder Kemper's business from being made without the approval of Scudder Kemper's directors who are elected by the officers and employees of Scudder Kemper, and that these governance arrangements will be unaffected by the Transaction. You represent that there will be no change in the Board of Directors or Executive Committee of Scudder Kemper as a result of the Transaction, although in the foreseeable future it is possible that a person currently associated with B.A.T.'s financial services businesses may join the Board if a vacancy arises. You also do not expect any material changes in the investment management personnel of Scudder Kemper who currently provide investment advisory services as a result of the Transaction.

Analysis

Section 205(a)(2) of the Advisers Act generally makes it unlawful for any investment adviser that is not exempt from registration under Section 203(b) to enter into or perform any investment advisory contract unless the contract provides that no assignment of the contract shall be made by the adviser without the consent of the client. Similarly, Section 15(a)(4) and Section 15(b)(2) of the Investment Company Act make it unlawful for any person to serve as an investment adviser or principal underwriter, respectively, to a registered investment company except pursuant to a written contract that provides for its automatic termination in the event of its assignment. Each Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.² Although "controlling block" of voting securities is not defined under either Act, both Acts define "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company."³ In addition, the Investment Company Act provides a rebuttable presumption of control when any person beneficially owns, either directly or indirectly, more than 25% of the voting securities of a company. Conversely, a person who does not own more than 25% of the voting securities of a company is presumed not to control a company.⁴ The Advisers Act contains no similar presumptions.

² Section 202(a)(1) of the Advisers Act and Section 2(a)(4) of the Investment Company Act.

³ Section 202(a)(12) of the Advisers Act and Section 2(a)(9) of the Investment Company Act.

⁴ Section 2(a)(9) of the Investment Company Act.

The issue presented by the Transaction is whether the acquisition by Allied Zurich of 43% of the outstanding voting securities of ZFS would result in an assignment of Scudder Kemper's advisory contracts. If there is an assignment, Scudder Kemper's investment advisory contracts with the Funds would be terminated automatically, and the contracts with Advisory Clients could continue only with the consent of the Advisory Clients.

Rule 202(a)(1)-1 under the Advisers Act provides that a transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of Section 205(2) of the Advisers Act. Similarly, Rule 2a-6 under the Investment Company Act provides that a transaction which does not result in a change of actual control or management of an investment adviser to, or principal underwriter of, an investment company is not an assignment for purposes of Section 15(a)(4) or Section 15(b)(2) of that Act. In your opinion, the Transaction will not result in a change of actual control or management of Scudder Kemper. You therefore believe that under the terms of Rule 202(a)(1)-1 and Rule 2a-6, there will be no assignment of Scudder Kemper's advisory contracts with its Advisory Clients and the Funds as a result of the Transaction.

You note, however, that there may be some uncertainty as to whether Rule 202(a)(1)-1 and Rule 2a-6 are available for all types of transactions, or whether the rules are available only for certain nominal reorganizations, such as changes in an investment adviser's domicile or legal form. The uncertainty may arise from statements that appear in the proposing and adopting releases for the rules. For example, when the Commission proposed Rule 202(a)(1)-1 and Rule 2a-6, it noted that investment advisers "may be involved in certain transactions -- particularly modifications of corporate structure," which may involve a transfer of a controlling block of voting securities but no change in actual control.⁵ The Commission cited several examples of transactions that involved nominal structural changes, such as changes in an adviser's state of incorporation.⁶ The Commission also stated that, "[i]n determining whether a transaction is

⁵ Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies, Investment Company Act Release No. 10809 (Aug. 6, 1979) (proposing Rule 2a-6) ("Release 10809"); Certain Transactions Not Deemed Assignments, Advisers Act Release No. 1013 (Feb. 20, 1986) (proposing Rule 202(a)(1)-1) ("Release 1013").

⁶ Release 10809 at n.3 (citing, e.g., FMR Corp. (pub. avail. Dec. 16, 1977); Equitable of Iowa Variable Annuity Account A (pub. avail. Nov. 25, 1977); Securities Management and Research Inc. (pub. avail. Dec. 30, 1976); ITT Variable Annuity Insurance Company - Separate Account (pub. avail. Jan. 24, 1972)).

within the purview of the rule, rule 2a-6 should be construed narrowly in light of the investor protection concerns Congress intended to be fulfilled.”⁷

In our view, Rule 202(a)(1)-1 and Rule 2a-6 may apply to any transaction, provided that there is no change in actual control or management of the investment adviser. The rules are not limited to nominal reorganizations such as changes in an adviser’s domicile or legal form. We believe that the Commission’s admonition that Rule 2a-6 be construed narrowly in light of investor protection concerns applies not to the type of transaction involved, but to whether there is a change in actual control or management as a result of the transaction. The legislative history of the Advisers Act and the Investment Company Act indicates that the assignment provisions of the Acts were meant to address concerns about fiduciaries trafficking in investment advisory contracts.⁸ In our view, if there is no change in the actual control or management of an investment adviser, the investor protection concerns associated with the trafficking of advisory contracts are not implicated.⁹ We therefore concur that Scudder Kemper may rely on Rule 202(a)(1)-1 and Rule 2a-6 to make a determination of whether an assignment will occur as a result of the Transaction for purposes of Section 205(a)(2) of the Advisers Act and Section 15(a)(4) of the Investment Company Act, notwithstanding that the Transaction is not a nominal reorganization.

⁷ Id. at n.5; Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies, Investment Company Act Release No. 11005 at n.1 (Jan. 2, 1980) (adopting Rule 2a-6).

⁸ See, e.g., Investment Company Act of 1940 and Investment Advisers Act of 1940, S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940); and Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (1940).

⁹ See Release 10809 at text accompanying n.4 (“where there is no change in the actual control or management of the investment adviser . . . and, hence, the actual management of the investment company . . . the transaction would not appear to conflict with the Congressional concerns embodied in the Act.”). See also Certain Transactions Not Deemed Assignments, Advisers Act Release No. 1034 (Sep. 11, 1986) (when adopting Rule 202(a)(1)-1, the Commission stated that, “[i]f the transaction . . . does not result in an actual change of control or management of the adviser, interpreting the consent requirement of Section 205(2) to apply . . . appears to serve no useful purpose and, in fact, merely increases the adviser’s cost of doing business without providing any benefit to the client.”).

The staff generally will not respond, however, to inquiries as to whether a particular transaction falls within Rule 202(a)(1)-1 or Rule 2a-6. The Commission has stated that the issue of whether a particular transaction involves a change in actual control or management is primarily factual in nature, and that the staff is "not in a position to make the investigation necessary to ascertain, verify, or evaluate the requisite factual information regarding particular transactions."¹⁰ We therefore take no position as to whether the Transaction may involve a change in actual control or management of Scudder Kemper.



Brendan C. Fox
Special Counsel

¹⁰ See Release 10809 and Release 1013.

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August 26, 1998

Douglas J. Scheidt, Esq.
Associate Director
Division of Investment Management
Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Zurich Insurance Company et al.

Dear Mr. Scheidt:

On behalf of Zurich Insurance Company ("Zurich") and Scudder Kemper Investments, Inc. ("Scudder Kemper"), we are writing to seek concurrence from the staff of the Securities and Exchange Commission (the "Staff") that, based upon the facts and representations set forth herein, Rule 202(a)(1)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"),¹ will not be construed so narrowly as to preclude Zurich and Scudder Kemper from concluding that the transaction described below will not constitute a change of "actual control or management" of Scudder Kemper and therefore will not result in an assignment under the Advisers Act of Scudder Kemper's advisory client agreements (the "Advisory Client Agreements").²

¹ Rule 202(a)(1)-1 states that "[a] transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of Section 205(2) of the [Advisers] Act."

² As further discussed below, given the presumptive change in "control" under Section 2(a)(9) of the Investment Company Act of 1940, as amended (the "1940 Act"), Zurich and Scudder Kemper have applied to the Securities and Exchange Commission (the "Commission") for exemptive relief pursuant to Section 6(c) of the

We are seeking the concurrence of the Staff in light of the fact that, in the Commission's proposing and adopting releases for Rule 202(a)(1)-1 under the Advisers Act, the Commission noted that the rule is substantively identical to Rule 2a-6 under the 1940 Act,³ and that in proposing and adopting Rule 2a-6, the Commission stated that it should be construed narrowly in light of the investor protection concerns the rule was intended to address.⁴

ZURICH AND SCUDDER KEMPER

Zurich is a Swiss corporation whose shares are publicly traded on the Swiss Exchange. Zurich and its subsidiaries and affiliates (collectively, the "Zurich Group") are engaged in various financial services businesses, including property and casualty insurance, life insurance, reinsurance and asset management. Zurich Group had gross written premiums, policy fees and insurance deposits of \$25.5 billion and net income of over \$1.2 billion for the fiscal year ended December 31, 1997, and gross written premiums, policy fees and insurance deposits of \$24.4 billion and net income of over \$1.0 billion for the fiscal year ended December 31, 1996.

Scudder Kemper is a Delaware corporation that is an investment adviser registered under the Advisers Act. Scudder Kemper is one of the largest investment management organizations worldwide, managing assets globally for mutual fund investors, retirement and pension plans, institutional and corporate clients, insurance companies and private family and individual accounts. It is also one of the largest mutual fund managers in the United States. As of June 30,

1940 Act in connection with the possible assignment of Scudder Kemper's existing advisory agreements with registered investment companies for which Scudder Kemper acts as adviser or sub-adviser. (File No. 812-11244)

³ See IA Rel. Nos. IA-1013 (Feb. 21, 1986) and IA-1034 (Sept. 11, 1986).

Rule 2a-6 states "[a] transaction which does not result in a change of actual control or management of an investment adviser to, or a principal underwriter of, an investment company is not an assignment for purposes of section 15(a)(4) or section 15(b)(2) of the [1940] Act, respectively."

⁴ See IC Rel No. 10809 (Aug. 6, 1979) ("Release 10809") and IC Rel. No. IC-11005 (Jan. 2, 1980).

1998, Scudder Kemper acted as investment adviser to approximately 1,600 advisory clients (excluding registered investment companies) ("Advisory Clients") with aggregate assets over \$80.5 billion. As compensation for the investment advisory services provided to the Advisory Clients, Scudder Kemper is typically entitled to fees based on the Advisory Clients' net assets. Zurich, through its subsidiaries, owns approximately 70% of the outstanding voting securities of Scudder Kemper. The remaining approximately 30% is owned by officers and employees of Scudder Kemper.

THE TRANSACTION

Zurich and B.A.T Industries p.l.c. ("B.A.T") have entered into a Merger Agreement (the "Merger Agreement"), pursuant to which the financial services businesses of B.A.T will be combined with Zurich's businesses (the "Transaction"). As more fully described below, for legal, tax and accounting reasons it was not possible to structure the Transaction as a direct merger between B.A.T and Zurich, with former B.A.T and Zurich shareholders directly owning the combined entity (as was the case in Dean Witter, Discover & Co.; Morgan Stanley Group Inc.⁵). Rather, the parties have achieved the functional equivalent by structuring the Transaction so that the former B.A.T and Zurich shareholders will own the combined company through dual public holding companies, with a unified governance structure.

Zurich intends to establish a new holding company, Zurich Allied AG, a Swiss corporation ("Zurich Allied"), the shares of which will be exchanged for Zurich shares by way of a public exchange offer to the Zurich shareholders so that ultimately the Zurich current shareholders will own shares of Zurich Allied.

B.A.T will reorganize its existing corporate structure by separating substantially all of its financial services subsidiaries (the "B.A.T Financial Services Businesses") from its tobacco-related subsidiaries in effect by way of a spin-off. B.A.T will ultimately distribute to its shareholders shares of a new holding company, Allied Zurich p.l.c., a United Kingdom corporation ("Allied Zurich"), for the B.A.T Financial Services Businesses.

⁵ 1997 SEC No-Act. LEXIS 548 (April 18, 1997).

After these reorganizations are effected, Allied Zurich will transfer the B.A.T Financial Services Businesses to Zurich Financial Services, a newly formed Swiss corporation, and Zurich Allied will contribute all of the shares exchanged by the Zurich shareholders to Zurich Financial Services. In exchange therefor, Zurich Allied and Allied Zurich will receive voting securities representing 57% and 43%, respectively, of the voting capital stock of Zurich Financial Services.⁶ These relative equity percentages reflect the parties' agreed-upon valuations of their respective businesses to be contributed to Zurich Financial Services at the closing of the Transaction.

Zurich Financial Services, as a holding company, will then hold directly or indirectly all the Zurich businesses and the B.A.T Financial Services Businesses. To Zurich's knowledge there is no individual shareholder that currently beneficially owns 5% or more of Zurich or B.A.T, and it is anticipated that neither Zurich Allied nor Allied Zurich will have any shareholder that will own 5% or more of the voting securities of such company or otherwise constitute a "control" person of either such entity within the meaning of the Act.

GOVERNING AGREEMENT

Upon the closing of the Transaction, Zurich Allied and Allied Zurich will enter into a Governing Agreement (the "Governing Agreement") which will set out certain terms relating to the establishment and organization of Zurich Financial Services and the relationship of Zurich Allied and Allied Zurich (each, a "Topco") following the closing.

⁶ Each of Zurich Allied and Allied Zurich will hold one series of non-equity (or "income access") shares of Zurich Financial Services that will not be entitled to vote and that will receive dividends if and to the extent declared on such series. In addition, Zurich Allied and Allied Zurich may directly hold income shares in certain of Zurich Financial Services' subsidiaries to facilitate tax efficient dividend payments. A small minority shareholding in Zurich will remain with Zurich Allied for Swiss tax purposes, the aggregate market value of which will be approximately \$1.4 million.

⁷ The B.A.T tobacco business will be held by a separate publicly traded holding company, British American Tobacco p.l.c., a U.K. corporation.

Purpose. The purpose of the Governing Agreement (and the Articles of Incorporation and Organizational Rules of Zurich Financial Services to be adopted pursuant thereto) is to achieve a unified governance structure for the entire Zurich Financial Services group, replicating as closely as possible the effect of a direct merger of Zurich with the B.A.T Financial Services Businesses.

Under the Topco structure, the Transaction can be accounted for as a "pooling of interests" under International Accounting Standards, and dividends can be upstreamed from Zurich Financial Services' operating subsidiaries in a tax efficient manner (i.e., through the use of "income access" shares, Zurich Financial Services can upstream dividends from its U.K. operating subsidiaries directly to a U.K. company -- Allied Zurich -- rather than through the Swiss-domiciled Zurich Financial Services, which would subject the dividend stream to Swiss withholding tax, which previously was not the case). Through "dividend equalization arrangements" set forth in the Governing Agreement, the Topcos will be able to make distributions to the respective shareholders subject to the 57/43 allocation. Accordingly, while the former public shareholders of B.A.T will own their interests in Zurich Financial Services through Allied Zurich and the public shareholders of Zurich will own their interests through Zurich Allied, the decision as to which Topco a future shareholder will invest in should be determined by such factors as the shareholder's individual tax considerations and not on the basis of the underlying assets owned by either Topco. The Topcos are restricted from engaging in business operations other than owning shares in Zurich Financial Services and neither Topco may incur obligations of any kind, with certain limited exceptions. As a result, an investment in Allied Zurich or in Zurich Allied represents an equivalent investment in Zurich Financial Services' operations. In this regard, the structure mirrors the result that would be achieved in a direct merger of Zurich with the B.A.T Financial Services Businesses, if such a direct merger had been possible.

Composition Of Boards and Zurich Financial Services Voting Procedures. While the Topcos and Zurich Financial Services initially will have separate Boards of Directors (with certain common members), the Governing Agreement provides that the Topcos will use their best efforts to assure that the respective Boards of Directors of the three companies converge as soon as possible and remain identical. Initially the Board of Directors of each Topco will have more than ten members, including members designated by the other Topco.

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The Chairman of the Board of one Topco will be the Vice Chairman of the Board of the other Topco.

The Board of Directors of Zurich Financial Services will have ten members, each of whom must be a member of the Board of one or both of the Topcos. The Chief Executive Officer of Zurich Financial Services (the "Zurich Financial Services CEO") may also be one of the members of Zurich Financial Services' Board. The initial Zurich Financial Services CEO (as well as the Zurich Financial Services Chairman and a director) will be Mr. Rolf Hüppi, the Chairman and Chief Executive Officer of Zurich. Of the initial Board, five members (including Mr. Hüppi) will be designated by Zurich and five members will be designated by B.A.T. Going forward, nominations to Zurich Financial Services' Board will be made by Nominations Committee (described below).

All Board decisions (except changing the Organizational Rules) will be taken by majority vote of the members, with the Chairman of the Zurich Financial Services Board (who initially will be Mr. Hüppi) having a "casting vote" (i.e., the right to break a deadlock in the case of a tie), except in limited specific circumstances. The only matters in respect of which the "casting vote" does not apply are (i) matters recommended by the Audit Committee of the Board, (ii) matters recommended by the Remuneration Committee of the Board in respect of the remuneration of the Chairman of the Board and the Zurich Financial Services CEO, (iii) the appointment and removal of the Chairman of the Zurich Financial Services Board and the Zurich Financial Services CEO (if he is at the same time the Chairman), (iv) appointments to the Nominations, Audit and Remuneration Committees of the Board and (v) nominations to the Zurich Financial Services Board which are not made through the Nominations Committee.

Various procedures govern the election of replacement directors to the Zurich Financial Services Board which are intended to facilitate the composition of the Boards of the Topcos and Zurich Financial Services being identical as soon as possible.

Group Management Board. As is customary for Swiss corporations, the Board will delegate the management of Zurich Financial Services to the CEO and, under his supervision, to the members of the group management board (the "Group Management Board"). The Group Management Board will initially consist of eleven members (including the CEO), of which eight currently are members of the Zurich Corporate Executive Board and one of those is the Chief Executive

Officer of Scudder Kemper. Each member of the Group Management Board is individually responsible to the CEO. While the Group Management Board will meet regularly to establish consensus-based group business policies, it will not have decision-making powers.

Nominations Committee. Zurich Financial Services' and each Topco's Board of Directors will have a Nominations Committee. The Nominations Committee of each Topco and Zurich Financial Services will consist of six persons, each of whom must be a member of the Zurich Financial Services Board. Each Topco will have the right for the first four years from the closing of the Transaction to appoint three members of the Nominations Committees of the other Topco and Zurich Financial Services.

Zurich Financial Services Shareholder Votes. Zurich Financial Services' Articles of Incorporation may be changed only by a resolution passed by shareholders owning at least 58% of all the voting shares. If any matter arises which requires a vote of the shareholders of Zurich Financial Services to be taken, the affirmative vote of shareholders owning 58% of the voting shares of Zurich Financial Services will be required to approve such matter. Such matters are, in addition to amendments to the Articles, appointing and dismissing board members and auditors, approving the annual report, the annual financial statements and the consolidated financial statements, discharging members of the Board of Directors of Zurich Financial Services, declaring dividends, approving any transfer of any of Zurich Financial Services' shares and any other matters reserved to shareholders.

Allied Zurich and Zurich Allied Shareholders. As noted earlier, Zurich and B.A.T are both broadly held; to Zurich's knowledge, no one person beneficially owns 5% or more of Zurich's or B.A.T's voting securities. Zurich does not expect that, upon completion of the proposed merger, either of the new public companies, Zurich Allied and Allied Zurich, will have a shareholder that will beneficially own 5% or more of its voting securities.

Limitations on Topco Activities and Dividend Equalization Arrangements. Neither Topco may sell, or create or permit any lien to exist on, any of its shares in Zurich Financial Services. Zurich Financial Services may not issue additional shares of stock unless otherwise approved by the vote of shareholders owning 58% or more of its shares. To prevent a takeover bid for one Topco ("Topco one") but not for the other ("Topco two"), Topco two would have the right to purchase Zurich Financial Services shares held by Topco one

for cash, shares in Topco two or other defined consideration, if such a bid were made. In certain limited cases -- principally a bankruptcy of a Topco or certain violations of covenants of a Topco relating to disposals of its Zurich Financial Services shares and the like -- the other Topco will have a call on Zurich Financial Services shares owned by the bankrupt or breaching Topco.

Neither Topco may engage in business activities other than owning Zurich Financial Services shares or incur obligations of any kind, with certain limited exceptions relating to investment of cash balances, liabilities incidental to maintaining stock exchange listings or corporate housekeeping and similar matters. All costs and expenses of the Topcos are to be satisfied out of dividends from Zurich Financial Services.

Dividend equalization arrangements in the Governing Agreement provide for the Topcos to receive dividends from Zurich Financial Services (or directly from Zurich Financial Services' operating subsidiaries through the use of non-equity shares) in proportion to their respective equity interests in Zurich Financial Services (i.e., 43% to Allied Zurich and 57% to Zurich Allied). The dividend equalization arrangements are intended to ensure that the Topcos will be able to pay dividends subject to the 43/57 allocation.

The Transaction is contemplated to be completed in early September 1998, although unforeseen circumstances could result in a delay.

Legal Analysis

For the reasons set forth below, Zurich and Scudder Kemper believe that the Transaction does not result in a change of actual control or management of Scudder Kemper.

1. Acquisition by Allied Zurich of a 43% Interest in Zurich Financial Services Does Not Constitute the Introduction of a New Control Person

Upon the consummation of the Transaction, in substance the Zurich businesses and the B.A.T Financial Services Businesses will be combined in a single enterprise owned by public shareholders with no concentrated block of ownership, which in analogous circumstances the Staff has concluded would not trigger a change in control. In Dean Witter, Discover & Co.; Morgan Stanley Group Inc., the Staff agreed that the merger of Dean Witter, Discover & Co. ("DWD") and Morgan Stanley Group Inc. ("MS") would not result in an assignment of

advisory contracts under the 1940 Act or the Advisers Act notwithstanding the fact that DWD would issue stock equal to more than 25% of its outstanding common stock to accomplish the merger and MS would cease to exist after the merger. In that letter, the Staff summarized its position as follows:

In our view, the transfer or issuance of a block of stock in connection with a merger involving two issuers generally would not by itself cause an assignment of the advisory contracts of their advisory subsidiaries, for purposes of the Investment Company Act or the Advisers Act, unless (1) a person who had control of either issuer prior to the transaction does not have control of the surviving entity after the transaction, (2) a person who did not have control of either issuer prior to the transaction gains control of the surviving entity, or (3) the transaction results in an advisory subsidiary being merged out of existence.

Prior to the consummation of the Transaction, each of Zurich and B.A.T was publicly held with no controlling shareholder. Subsequent to the Transaction, each of Zurich Allied and Allied Zurich are expected to have no controlling shareholder, and none of Zurich's advisory subsidiaries will be merged out of existence. The only question, then, is whether the fact that former B.A.T shareholders will own a 43% interest in Zurich Financial Services through Allied Zurich fails the second part of the test by constituting the introduction of a new control person. Zurich and Scudder Kemper submit that in substance it does not.

The dual Topco structure described above is being employed primarily to address various legal, accounting and tax issues presented by a cross-border merger. Given the express agreement of the parties to cause each of Zurich Financial Services and the two Topcos to maintain identical Boards of Directors, Zurich and Scudder Kemper believe that it would elevate form over substance to regard Allied Zurich as a separate legal entity holding a controlling block of voting securities sufficient to warrant a finding of a change in control under the Advisers Act.

As a substantive matter, the Transaction should not give rise to a concern over "trafficking" in advisory contracts that Section 205(a)(2) of the Advisers Act and its corollary provision, Section 15(a) under the 1940 Act, seek to address. While asset management is one of the core business segments of the combined enterprise, it has three other core business segments as well: non-life insurance, life insurance and reinsurance. For example, Zurich Financial Services is expected to be the third largest writer of personal lines property and casualty premiums and of total property and casualty premiums in the United States, and one of the top ten firms in the global reinsurance business. On a pro forma basis, Zurich Financial Services total 1996 aggregated gross premium income would have been approximately \$40.0 billion. It is thus apparent that the primary business objective of the Transaction was not a combination with the asset management business of Scudder Kemper. (Indeed, at the time the agreement in principle relating to the Transaction was first announced, Zurich's acquisition of its interest in Scudder Kemper had not yet been consummated.)

2. Allied Zurich Will Have No Right To Direct the Day-to-Day Management of Zurich Financial Services or Scudder Kemper

In this respect, the recent no-action letter issued by the Staff to J.P. Morgan & Co. Incorporated ("JPM")⁹, while predicated upon a different factual setting¹⁰, is instructive. In that letter, JPM proposed to purchase a 45% equity interest in American Century Companies, Inc. ("ACC") which, due to ACC's dual class structure, entitled JPM to a maximum of 10.83% of the voting power in ACC. Pursuant to a stockholders agreement, ACC agreed not to take certain specified actions (relating to transactions that could significantly alter ACC's structure or business as currently conducted) without JPM's prior consent. JPM also had the right, upon a 25% or greater decline in ACC's assets under management (net of market changes) or extraordinary turnover

⁹ American Century Companies, Inc./J.P. Morgan & Co. Incorporated, 1997 SEC No-Act. LEXIS 1107 (December 23, 1997).

¹⁰ No-action relief was sought to ensure that certain voting rights granted to a holder of less than 25% of the voting stock of a company were not sufficient to rebut the presumption under Section 2(a)(9) of the 1940 Act that any person who does not own more than 25% of the voting securities of a company shall be presumed not to control such company.

in ACC's senior management, to replace certain members of ACC's senior management.¹¹ Counsel for JPM successfully argued that these rights did not justify rebutting the presumption of no control on the basis that they (i) were not intended to, and would not, give JPM the right to direct the day-to-day management of ACC, (ii) would apply only in extraordinary situations and (iii) merely provided JPM with limited consent rights, as opposed to the right to direct affirmatively the activities of ACC.

In the present case, Allied Zurich will have no right to direct the day-to-day management of Zurich Financial Services or its subsidiaries, including Scudder Kemper and its subsidiaries, but rather has only the limited shareholder and contractual rights granted by the Governing Agreement, the Articles of Incorporation and Organizational Rules, such as approval of amendments to the Zurich Financial Services Articles, changes in Zurich Financial Services board members or auditors, the declaration of dividends by Zurich Financial Services, and transfers of Zurich Financial Services shares. None of these rights has any direct bearing on the day-to-day operations of Scudder Kemper or the services it provides to its clients. In that regard, Zurich has represented to the Boards of Directors of registered investment companies managed by Scudder Kemper, and Allied Zurich has confirmed its belief, that the consummation of the Transaction should not result in any change in the management or governance of the U.S. investment advisory businesses of Scudder Kemper. Furthermore, Zurich and Scudder Kemper do not anticipate any material changes in the investment management personnel who currently provide investment advisory services, or any material change in the level of services provided or the fees charged, as a result of the Transaction.

¹¹ If any three of ACC's Chief Executive Officer, Chief Operating Officer, Chief Investment Officer and Chief Marketing Officer cease to be employed by ACC in any 12-month period (other than by death, disability or normal retirement) or if any five of the individuals holding specified senior management positions (including those individuals holding the foregoing positions) cease to be employed by ACC in any 12-month period (other than as aforesaid), JPM can veto any replacement named by ACC's Board of Directors, and if no agreement with respect to the replacement is reached within three months of the event causing the replacement, JPM has the right to fill such position. In addition, if the Chief Operating Officer of ACC is one of those who has ceased to be employed, then JPM can either replace his successor or name his successor, as well as veto any selection of his replacement made by ACC's Board of Directors.

Another factor that points strongly towards the absence of any change in the management or operations of Scudder Kemper is the governance arrangements that were put in place at the time of the acquisition of Zurich's 70% interest in Scudder Kemper and that remain unaffected by the Transaction. These arrangements preclude certain major decisions affecting Scudder Kemper being taken without the approval of Scudder Kemper directors elected by the non-Zurich shareholders of Scudder Kemper -- namely, officers and employees of Scudder Kemper, who currently own in the aggregate (and will continue to own following the Transaction) approximately 30% of Scudder Kemper's stock. Approval of a majority of the directors elected by the non-Zurich shareholders is required for matters that include: causing Scudder Kemper to engage substantially in a business not related to investment management; making material acquisitions or divestitures; making material changes in the company's capital structure; dissolving or liquidating the company; entering into certain transactions with Zurich or its affiliates; or changing the company's charter or by-laws in ways adverse to the rights of the non-Zurich shareholders of Scudder Kemper. These protective provisions will remain in place for the next five years absent the ownership level of non-Zurich shareholders falling below 10% or an initial public offering of Scudder Kemper.

In addition to these provisions in the Scudder Kemper governance arrangements, Allied Zurich has agreed, in connection with the proposed Transaction, that, in the event the designation of any members to the Board of Directors or the Executive Committee of Scudder Kemper is submitted to Zurich Financial Services for approval, Allied Zurich will abstain from voting on the designation of such persons. There are no changes to the Scudder Kemper Board of Directors or Executive Committee being made as a consequence of the Transaction, although in the foreseeable future it is possible that a person currently associated with the B.A.T financial services businesses may join the Board if a vacancy arises.

It is also worthy of note that Scudder Kemper's Chief Executive Officer, Edmond D. Villani, is, and after the closing of the Transaction is expected to continue to be, a member of Zurich's Corporate Executive Board with responsibility for asset management, and that Mr. Villani, following the closing of the Transaction, is expected to be a member of Zurich Financial Services' Group Management Board with responsibility for asset management.

Based on the foregoing, we have advised Zurich and Debevoise & Plimpton has advised Scudder Kemper that, subject to the receipt of the interpretive advice requested hereby, the Transaction should not result in a change of actual control or management of Scudder Kemper within the meaning of Rule 202(a)(1)-1 of the Advisers Act and therefore there should be no "assignment" of the Advisory Client Agreements requiring advisory client consent.

REQUESTED INTERPRETATION

Section 205(a)(2) of the Advisers Act generally makes it unlawful for an investment adviser, unless exempt from registration, to enter into or perform any investment advisory contract unless the contract provides, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the client. Section 202(a)(1) of the Advisers Act states that an "assignment" will be deemed to occur upon "any direct or indirect transfer . . . of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor . . ."

Section 202(a)(12) of the Advisers Act defines "control" as follows:

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Although the phrase "power to exercise a controlling influence over the management or policies of a company" does not provide an objective standard for determining whether control actually exists in a particular situation, Section 2(a)(9) of the 1940 Act does contain a numerical standard for presumptively determining whether control exists. Under that Section, the beneficial owner of 25 percent or less of the "voting securities"¹² of a company presumptively does not control the company; and correspondingly, the beneficial owner of more than 25% of the outstanding voting securities of a company presumptively does control the company, unless the presumption is rebutted to the satisfaction of the

¹² The term "voting securities" is defined in Section 2(a)(42) of the 1940 Act to mean: "any security presently entitling the owner or holder thereof to vote for the election of directors of a company."

Commission. The Advisers Act has no similar presumption. However, as noted above, Rule 202(a)(1)-1 provides that "[a] transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of Section 205(2) of the [Advisers] Act."

Given the Commission's prior statements in both the proposing and adopting release for Rule 2a-6 under the 1940 Act, the analog of Rule 202(a)(1)-1, that Rule 2a-6 should be construed narrowly in light of the investor protection concerns the rule was intended to address, we seek the Staff's assurances that Rule 202(a)(1)-1 is available, not only in the more common types of transactions cited in the proposing release for Rule 2a-6 that were the subject of no-action letters prior to the adoption of that rule¹³, but in the context of any transaction in which in fact there is no change of actual control or management, regardless of whether a presumptive control person under Section 2(a)(9) of the 1940 Act is introduced. To conclude otherwise would largely eviscerate the relief otherwise afforded by Rule 202(a)(1)-1, and is a reading not supported by the plain language of the rule itself.¹⁴

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¹³ See note 3 to Release 10809, citing staff responses to inquiries by FMR Corp. (Dec. 16, 1977) [merger into newly-formed subsidiary to effect change in state of incorporation]; Equitable of Iowa Variable Annuity Account A (Nov. 25, 1977) [formation of a holding company]; Securities Management and Research, Inc. (Dec. 30, 1976) [capital contribution to subsidiary]; ITT Variable Annuity Insurance Company-Separate Account (Jan. 24, 1972), [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) @ 78,683 [transfer of stock between subsidiaries].

¹⁴ While Zurich and Scudder Kemper as a precautionary matter have applied to the Commission for an exemptive order permitting Scudder Kemper to continue to serve as investment adviser to the registered investment companies currently advised by Scudder Kemper for up to 150 days following the consummation of the transaction (see Note 2 infra), and thus it may not be necessary to rely on Rule 2a-6 under the 1940 Act, we believe that, since that rule and Rule 202(a)(1) are virtually identical in all substantive respects, the same interpretation being requested under the Advisers Act is warranted under the 1940 Act as well, and we request that the Staff confirm that it concurs in this conclusion as well.

Douglas J. Scheidt, Esq.
August 26, 1998
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Should you have any questions or comments concerning this letter, please contact the undersigned at (212) 728-8265.

Very truly yours,



Daniel Schloendorn

Enclosures

cc: Dr. Kaspar Hotz
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