

PUBLIC

MAY 23 1995

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-07-CC
The One Group
File No. 811-4852

By letter dated May 19, 1995, you seek assurance that the staff would not recommend enforcement action to the Commission under Section 10(f) of the Investment Company Act of 1940 (the "1940 Act") if the investment portfolios (each a "Fund") of The One Group (the "Trust") engage in the transactions described in your letter.

The Trust is an open-end management investment company registered under the 1940 Act. The Trust has thirty-one Funds, each of which offers a separate series of shares of beneficial interest (nine are not currently operational).

Banc One Investment Advisors Corporation ("BOIA") is the investment adviser to each Fund. Under the terms of its advisory agreement with the Trust, BOIA selects, contracts with, and compensates the investment subadvisers to certain of the Trust's Funds (the "Subadvisers"). BOIA retains ultimate responsibility for the investment program of each Fund, monitors the compliance of the Subadvisers with the investment objectives and related policies of each Fund, reviews the performance of the Subadvisers, and reports periodically on their performance to the Trust's trustees. Currently, three Subadvisers serve the Trust. Goldman Sachs Asset Management ("GSAM"), Boston International Advisors, Inc., and Van Kampen Merritt Management, Inc. each manages one Fund.¹

You represent that each Subadviser is completely independent of each other Subadviser; no Subadviser is an "affiliated person" of any other Subadviser, as that term is defined in Section 2(a)(3) of the 1940 Act; and each Subadviser competes directly or indirectly with each other Subadviser in the investment advisory business. None of the Subadvisers is an affiliated person of BOIA or of any officer, trustee, or employee of the Trust.

Section 10(f), in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of the foregoing.

You state that Goldman Sachs is a major participant in the business of underwriting securities offerings, and that it is

¹ GSAM is a separate operating division of Goldman Sachs & Co.

important to the investment performance of a Fund that it not be restricted in its purchases of securities during an underwriting syndicate of which Goldman Sachs is a principal underwriter. You propose that a Fund be permitted to purchase securities principally underwritten by Goldman Sachs, or any person of which Goldman Sachs is an affiliated person, provided that Goldman Sachs: (1) does not manage the purchasing Fund; and (2) is not an affiliated person of the purchasing Fund's Subadviser, BOIA, or any officer, trustee, or employee of the Trust.² You assert that the proposed transactions do not raise the concerns that Section 10(f) was intended to address, such as "dumping," the practice of selling unmarketable securities to a controlled company, and "bailing out," a practice in which a controlled company purchases securities from a sponsor to alleviate the financial distress of the sponsor.

On the basis of the facts and representations in your letter, we would not recommend that the Commission take enforcement action under Section 10(f) if a Fund engages in the proposed transactions. Because this response is based on the facts and representations in your letter, you should note that different facts or representations may require a different conclusion. This letter expresses the Division's position on enforcement action only and does not purport to express any legal conclusions on the issues presented.

Having stated our views with respect to the circumstances under which a portfolio of a series investment company may purchase a security a principal underwriter of which is a subadviser, or a person of which the subadviser is an affiliated person, of another portfolio, we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues.³


Edward J. Rubenstein
Senior Counsel

² We note that The One Group and Goldman Sachs have obtained an exemption from Section 17(a) of the 1940 Act to engage in the proposed transactions. See The One Group and Goldman, Sachs & Co., Investment Company Act Rel. Nos. 19410 (April 15, 1993) (notice) and 19470 (May 11, 1993) (order).

³ See also North American Security Trust and NASL Series Trust (pub. avail. Feb. 2, 1993).

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1940 Act
Section 10(f)

May 19, 1995

ACT ICA of 1940
SECTION 10(f)
RULE _____
PUBLIC
AVAILABILITY 5/23/95

VIA MESSENGER

John V. O'Hanlon, Esq.
Special Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Room 10192, Mail Stop 10-6
Washington, D. C. 20549

Re: The One Group. Request for No-Action Letter

Dear Mr. O'Hanlon:

We are writing on behalf of The One Group, (the "Trust") to request the staff's assurance that it will not recommend that the Commission take any enforcement action against the Trust alleging a violation of Section 10(f) of the Investment Company Act of 1940 (the "Act") if the various investment portfolios of the Trust engage in the transactions described below. We believe that the proposed transactions are consistent with the language and purposes of Section 10(f) of the Act and with Commission positions with regard to the regulation of series companies under the Act, including the position taken by the Staff in North American Security Trust ("NAST") (avail. February 2, 1993).

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BACKGROUND

The Funds

The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company (File No. 811-4236). The Trust currently has thirty-one investment portfolios, (referred to herein as "Funds" or "Fund") each of which offers a separate series of shares of beneficial interest (nine of such series are not currently operational). The thirty-one Funds are listed on Exhibit A to this letter. The investment objectives, policies and restrictions applicable to each Fund of the Trust are described in the Trust's registration statement on Form N-1A (File No. 2-95973).

Under Massachusetts law and its Declaration of Trust and Code of Regulations, the Trust is managed under the direction of its Trustees. Each Fund of the Trust has as its investment adviser Banc One Investment Advisors Corporation ("BOIA"), an indirect wholly-owned subsidiary of BANC ONE CORPORATION, that is registered with the Commission as an investment adviser. 440 Financial Distributors, Inc. serves as the distributor and principal underwriter of the Trust.

Under the terms of its advisory agreement with the Trust, BOIA selects, contracts with, and compensates the investment Sub-Advisers to certain of the Trust's Funds (the "Sub-Advisers"). BOIA retains ultimate responsibility for the investment program of each Fund, monitors the compliance of the Sub-Advisers with the investment objectives and related policies of each Fund, reviews the performance of the Sub-Advisers, and reports periodically on their performance to the Trustees. BOIA also provides certain administrative services and total expense guarantees to each Fund of the Trust.

The Sub-Advisers

There are currently three Sub-Advisers serving three Funds of the Trust. Goldman Sachs Asset Management ("GSAM"), Boston International Advisors, Inc. ("Boston International") and Van Kampen Merritt Management, Inc. ("Van Kampen") each manages one Fund of the Trust. Each Sub-Adviser makes all decisions regarding the purchase and sale of securities on behalf of the Fund that it manages. Each Sub-Adviser is registered with the Commission as an investment adviser.

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GSAM, a separate operating division of Goldman Sachs & Co. ("Goldman Sachs"), a New York limited partnership, serves as Sub-Adviser to the Government ARM Fund. Boston International, an independently owned corporation, serves as Sub-Adviser to the International Equity Index Fund. Van Kampen, a wholly-owned subsidiary of The Van Kampen Merritt Companies, Inc., which, in turn is a wholly-owned subsidiary of VKM Holding Inc., serves as Sub-Adviser to the Short-Term Global Bond Fund.

Each Sub-Adviser is completely independent of each other Sub-Adviser; no Sub-Adviser is an "affiliated person" of any other Sub-Adviser as that term is defined in Section 2(a)(3) of the Act. Moreover, in economic reality, each Sub-Adviser competes directly or indirectly with each other Sub-Adviser in the investment advisory business. None of the Sub-Advisers is an affiliated person of the Trust's adviser (BOIA) or of any officer, trustee or employee of the Trust.

Relevant Provisions of the Act

Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the investment company is the issuer) a principal underwriter of which is an investment adviser of the registered investment company or, is a person of which any investment adviser of the registered investment company is an affiliated person.

Section 2(a)(20) of the Act, in relevant part, defines an investment adviser of an investment company as

(A) any person . . . who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company and (B) any other person who pursuant to contract with a person described in clause (A) regularly performs substantially all of the duties undertaken by such person described in clause (A)

The Interpretive Problem

Other than purchases permitted by Rules 10f-1, 10f-2 and 10f-3, purchases by a Fund of the Trust of securities of which that Fund's Sub-Adviser, or a person of which that Sub-Adviser is an affiliated person, is a principal underwriter are clearly prohibited by Section 10(f).

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However, it is unclear whether the prohibitions of Section 10(f) extend to purchases by a Fund of securities of which a Sub-Adviser to one of the other Funds, or a person of which such a Sub-Adviser is an affiliated person, is a principal underwriter. For convenience, subsequent references to a Sub-Adviser as a principal underwriter will include persons of which the Sub-Adviser is an affiliated person.

As Goldman Sachs is a major participant in the business of underwriting securities offerings, it can be important to the investment performance of a Fund of the Trust that it not be restricted in its purchases of securities during an underwriting syndicate of which a principal underwriter is Goldman Sachs. This no-action request seeks to make entirely clear the possibility of such unrestricted purchases by Funds to which GSAM does not serve as Sub-Adviser. Although in some cases, it might prove beneficial to a Fund to which GSAM serves as Sub-Adviser to be able to purchase securities during an underwriting syndicate a principal underwriter of which is Goldman Sachs in excess of the amounts permitted by Commission rules, an exemptive order would be needed to engage in such purchases and, accordingly, such purchases are beyond the scope of this request. In the absence of an exemptive order, each Fund to which GSAM serves as Sub-Adviser will continue to purchase securities of which Goldman Sachs is a principal underwriter only to the extent permitted by rules under Section 10(f) of the Act.

REQUEST FOR RELIEF AND BASIS THEREFOR

The circumstances of the Trust are the same in all material respects to those of the applicants in NAST. As the NAST applicants argued, Section 10(f) should not prohibit a Fund from purchasing securities principally underwritten by Goldman Sachs, or any person of which Goldman Sachs is an affiliated person, where (1) Goldman Sachs does not manage the purchasing Fund and (2) Goldman Sachs is not an affiliated person of the Fund's Sub-Adviser, BOIA, or any officer, trustee or employee of the Trust (the "Proposed Transactions"). As in NAST, we do not believe that the Proposed Transactions raise the type of concerns that Section 10(f) was intended to address.¹ These concerns, as expressed by the Staff in its response to NAST, include concern over sponsors of investment companies improperly using those companies as customers for certain securities; particularly "dumping," the practice of selling unmarketable securities to a controlled

¹ Indeed, it may be compellingly argued, as it was in NAST, that Section 10(f) is not, in fact, applicable to the Proposed Transaction. However, in light of the Staff's recent consideration and response to such arguments in NAST (see Footnote 4 in the Staff's response) those arguments will not be repeated here.

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company, and "bailing out," a transaction in which a controlled company receives securities to alleviate the financial distress of the sponsor.

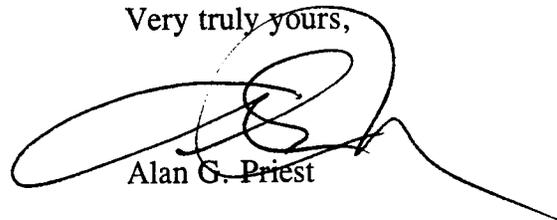
The staff of the Division of Investment Management has recently concluded that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to permit principal transactions between Funds of the Trust and Sub-Advisers (or affiliated persons thereof) other than the Sub-Adviser to the trading portfolio. See The One Group, Goldman Sachs & Co. Investment Company Act Release Nos. 19410 (April 15, 1993) (notice) and 19470 (May 11, 1993) (order). As a result, the Funds are permitted to engage in principal transactions with Sub-Advisers of other portfolios in the ordinary course of business. The staff's issuance, pursuant to delegated authority, of a notice and order permitting unrestricted principal trading in this context suggests that no action relief with respect to Section 10(f) to permit the Proposed Transactions would be consistent with the purposes and policies of the Act and prior positions taken by the Commission and its staff.

CONCLUSION

We respectfully request your advice that you will not recommend that the Commission take any enforcement action against the Funds alleging a violation of Section 10(f) of the Act if the Funds of the Trust engage in the Proposed Transactions.

Because this interpretive request involves a publicly-offered investment company and presents no issues peculiar to insurance products, we have directed this letter solely to your office. If you have any questions regarding this request, please feel free to contact the undersigned.

Very truly yours,



Alan G. Priest