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ACT ICA
SECTION 15(a)
RULE _____
PUBLIC _____
AVAILABILITY 1-11-96

No-Action Request
1940 Act/§ 15(a)
1940 Act/§ 17(a)
1940 Act/§ 24(f)

December 6, 1995

Securities and Exchange Commission
Division of Investment Management
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Attention: Office of Chief Counsel

Re: **Principal Preservation Portfolios, Inc.**
1933 Act Reg. No. 33-12
1940 Act File No. 811-4401
Prospect Hill Trust
1933 Act Reg. No. 33-56810
1940 Act File No. 811-7424

Ladies and Gentlemen:

On behalf of our clients, Principal Preservation Portfolios, Inc. ("Principal Preservation"), a Maryland corporation registered as a series, open-end management investment company, and Prospect Hill Trust ("Prospect Hill"), a Massachusetts business trust registered as a series, open-end management investment company, we hereby submit our request for the staff's confirmation that it would not recommend enforcement action against Principal Preservation and/or Prospect Hill under Sections 15(a), 17(a) or 24(f) of the Investment Company Act of 1940 ("1940 Act") and related rules of the Securities and Exchange Commission (the "Commission") if Principal Preservation and Prospect Hill participate in the reorganization transaction in the manner and for the purposes described herein.

Background

Current Structure. Principal Preservation's retail money market series, known as the Cash Reserve Portfolio (sometimes referred to herein as the "Retail Spoke"), and Prospect Hill's institutional money market series, known as the Prospect Hill Prime Money Market Fund (the "Institutional Spoke"), are the spokes of a Hub and Spoke® Structure for which the hub is The Prime Money Market Portfolio (the "Hub"), a series of The Prime Portfolios, a New York common law trust registered as a series, management investment company. The shares of the Institutional Spoke and the Retail Spoke are registered under the Securities Act of 1933 (the "1933 Act"). The Institutional Spoke markets and distributes its shares to institutional investors without a brokerage network, while the Retail Spoke markets and distributes its shares to individual investors through retail brokerage offices. The Retail Spoke has a Rule 12b-1 Distribution Plan, while the Institutional Spoke does not.

The Hub's shares are not registered under the 1933 Act, and the Hub offers and sells its shares only in private placement transactions to spokes such as the Retail Spoke and the Institutional Spoke. The Retail Spoke and the Institutional Spoke presently are the only spokes associated with the Hub. Due to developments within the past 18 months, management and the Boards of Prospect Hill, Principal Preservation and The Prime Portfolios believe it is unlikely additional spokes will invest in the Hub.

Service Provider Relationships. Since August 1, 1994, Ziegler Asset Management, Inc. ("ZAMI"), a wholly-owned subsidiary of The Ziegler Companies, Inc., has served as investment adviser to the Hub pursuant to the terms of an investment advisory agreement between ZAMI and The Prime Portfolios (on behalf of The Prime Money Market Portfolio) (the "Advisory Agreement"). The Advisory Agreement was approved by the shareholders of the Institutional Spoke and the Retail Spoke, and by each of the spokes as shareholders of the Hub, on November 29, 1994. B.C. Ziegler and Company ("B.C. Ziegler"), which also is a wholly-owned subsidiary of The Ziegler Companies, Inc. and therefore is an affiliate of ZAMI, provides administrative services to The Prime Portfolios pursuant to the terms of an administrative services agreement, and also provides depository, sub-custodial and accounting services (including daily valuation of portfolio securities) to the Hub pursuant to a depository contract and an accounting/pricing agreement. For providing these services, B.C. Ziegler receives fees specified in the operative agreements.

B.C. Ziegler also provides to the Retail Spoke certain administrative services, marketing and distribution services, shareholder servicing agent services, custodial and depository services and transfer and dividend disbursing agent services, and receives compensation for providing such services as specified in agreements between it and Principal Preservation. Under similar agreements with Prospect Hill, B.C. Ziegler provides to the Institutional Spoke certain administrative services, marketing and distribution services, custodial and depository services and transfer and dividend disbursing agent services. For providing these services, B.C. Ziegler receives compensation from the Institutional Spoke as specified in the terms of the respective agreements, with the exception of B.C. Ziegler's marketing and distribution services as distributor of the shares of the Institutional Spoke for which B.C. Ziegler receives no compensation. All of these service arrangements have been approved by the respective Boards of Principal Preservation, Prospect Hill and The Prime Portfolios, including a majority of the members of each Board who are not affiliated with ZAMI or B.C. Ziegler or otherwise do not have any interest in such agreements.

Other Affiliations. There also are certain other interrelationships among and between The Prime Portfolios, Prospect Hill, Principal Preservation, ZAMI and B.C. Ziegler. With regard to the Boards of the investment companies, the Board of Directors of Principal Preservation consists of five individuals, two of whom are directors and executive officers of one or more of The Ziegler Companies, Inc., B.C. Ziegler and ZAMI, and the other three of whom have no such affiliations. The Boards of Trustees of Prospect Hill and The Prime Portfolios each consist of three individuals. Two of the Trustees of each of The Prime Portfolios and Prospect Hill, who are different from each other, are independent or "disinterested" in the sense that they have no affiliations with The Prime Portfolios, Prospect Hill, Principal Preservation, ZAMI or B.C. Ziegler, other than in their capacities as Trustees of their respective investment companies. The remaining common Trustee of Prospect Hill and The Prime Portfolios, who also serves as the Chairman of the Board of each of those investment companies, is a Director and executive officer of Principal Preservation and of B.C. Ziegler.

Also, as the only two Spokes in this Hub and Spoke Structure, the Institutional Spoke and the Retail Spoke together own 100% of all of the shares of beneficial interest in the Hub. Because the Institutional Spoke and the Retail Spoke each own in excess of 5% of the outstanding voting securities of the Hub, they may each be deemed affiliated with the Hub, and therefore may be deemed affiliates of affiliates with respect to each other.

The final affiliation that bears mention is that ZAMI, in its capacity as an investment adviser, privately manages customer accounts, some of which invest in shares of the Institutional Spoke. ZAMI holds discretionary investment authority with respect to such shares, and, in most cases, also holds voting power with respect to such shares. Shares of the Institutional Spoke held in such advisory accounts with respect to which ZAMI holds discretionary voting power presently amounts to approximately 20% of all outstanding shares of the Institutional Spoke.

Proposed Reorganization Transaction

At the time this Hub and Spoke structure was first established, it was contemplated that additional spokes would be added to the Hub, and that the assets invested in the Hub by such additional spokes would significantly expand the asset size of the Hub, thereby spreading its fixed costs over a broader base of assets, adding economies of scale and ultimately reducing the Hub's expense ratio. Due to developments within the last 18 months, the respective Boards and managements of The Prime Portfolios, Prospect Hill and Principal Preservation no longer believe there is any significant potential for additional spokes to be added to the Hub in the future. Absent such benefits, the costs of maintaining and operating three separate investment companies in the present structure cannot be justified.

The Boards of Prospect Hill and Principal Preservation, therefore, have determined that it is in the best interests of their respective shareholders to reorganize into a structure involving two separate classes of a single series of one investment company. Such a reorganization would eliminate costs associated with maintaining three separate registrations under the 1940 Act, supporting three separate Boards, conducting three separate audits, paying a license fee for the use of the Hub and Spoke proprietary accounting system, and incurring other fees and expenses associated with the maintenance of three separate investment companies. This decision gained special impetus from new rules recently adopted by the SEC, which permit open-end mutual funds (including individual series of series companies) to establish separate classes of shares without going through the time consuming process of obtaining exemptive orders from certain SEC rules.

In order to unwind the present Hub and Spoke structure, the reorganization transaction (the "Despoking Transaction") would be conducted as follows. First, the Board of Principal Preservation would designate two classes of authorized shares of common stock within the Cash Reserve Portfolio in accordance with the SEC's recently-adopted rules. One class of such shares (the "Retail Class") would have a retail expense structure (including a Rule 12b-1 Distribution Fee), a low minimum investment and a distribution system identical to those of the Retail Spoke. The second class of shares ("Institutional Class") would have an institutional expense structure, a high minimum investment requirement and a distribution system identical to those of the Institutional Spoke. The Boards of Prospect Hill and Principal Preservation would then exercise their discretion to withdraw from the Hub the respective assets of the Institutional and Retail Spokes, subject to the liabilities of the Hub, and The Prime Portfolios would dissolve in accordance with New York laws and its declaration of trust.

At the same time, Prospect Hill (on behalf of the Institutional Spoke) and Principal Preservation (on behalf of the Retail Spoke) would enter into an agreement and plan of reorganization and liquidation (the "Plan of Reorganization and Liquidation") whereby: (1) all of the outstanding shares of common stock of the Retail Spoke automatically would be redesignated (without otherwise affecting the rights and privileges appertaining thereto) as shares of the Retail Class of common stock of the Cash Reserve Portfolio; (2) Principal Preservation would issue to Prospect Hill, in exchange for all of the assets (subject to the liabilities) of the Institutional Spoke, shares of the Institutional Class of common stock of the Cash Reserve Portfolio valued at \$1.00 per share; (3) Prospect Hill would liquidate and dissolve in accordance with Massachusetts law and its declaration of trust and the shares of the Institutional Class of common stock of the Cash Reserve Portfolio would be distributed to the shareholders of the Institutional Spoke on a pro rata basis.

Upon completion of the Despoking Transaction, each outstanding share of the Retail Spoke would be designated as a share of the Retail Class of the Cash Reserve Portfolio and would have the same rights and privileges. Shareholders of the Institutional Spoke would hold, in lieu of their present shares of common stock of the Prospect Hill Prime Money Market Fund, an equal number of shares of the Cash Reserve Portfolio's Institutional Class of common stock. ZAMI would enter into a new investment advisory agreement with Principal Preservation (on behalf of the Cash Reserve Portfolio) on terms and conditions substantively identical to the terms and conditions of the present Advisory Agreement, including the rate of compensation. Also, the existing service agreements between B.C. Ziegler and The Prime Portfolios, Prospect Hill and/or Principal Preservation would be amended or re-executed to provide for substantially the same services and the rates of compensation as those presently existing under the Hub and Spoke structure.

Filings and Approvals

In accordance with the requirements of the 1940 Act, Massachusetts law and the provisions of Prospect Hill's Declaration of Trust, the shareholders of the Institutional Spoke would be asked to approve the Plan of Reorganization and Liquidation. However, subject to the staff's granting of the no-action request set forth herein regarding approval of the new advisory agreement by shareholders of the Retail and Institutional Spokes, no further shareholder approvals would be solicited.

Approval of the Plan of Reorganization and Liquidation by the shareholders of the Institutional Spoke would be solicited by means of a joint Proxy Statement/Prospectus to be prepared and filed on Form N-14. That Form N-14 would also serve to register the shares of Cash Reserve Portfolio's Institutional Class to be issued in the Despoking Transaction. Following the Despoking Transaction, the Institutional and Retail Classes of shares of the Cash Reserve Portfolio would be offered through separate prospectuses and statements of additional information to be filed as separate post-effective amendments to Principal Preservation's Registration Statement on Form N-1A. Filing of the Form N-14 would be coordinated with filing of the amendments to the Form N-1A so as to facilitate closing and consummation of the Despoking Transaction with effectiveness of the amendments to the Form N-1A. Following the consummation of the Despoking Transaction and the dissolution of The Prime Portfolios and Prospect Hill Trust, Form N-8Fs will be filed seeking orders to terminate the investment company registrations of each of Prospect Hill and The Prime Portfolios.

Requests for No-Action Relief

In connection with the Despoking Transaction, we request, on behalf of Principal Preservation and Prospect Hill, that the staff confirm that it would not recommend enforcement action to the Commission against either or both of Prospect Hill or Principal Preservation:

1. Under Section 15(a) of the 1940 Act and the rules of the Commission adopted thereunder if they proceed with the Despoking Transaction without seeking approval of the new investment advisory agreement between ZAMI and Principal Preservation (on behalf of the Cash Reserve Portfolio) from the present shareholders of the Retail Spoke or the present shareholders of the Institutional Spoke;
2. Under Section 24(f) of the 1940 Act and Rule 24f-2 thereunder if, in computing its registration fees for the fiscal year in which the Despoking Transaction is consummated, Principal Preservation includes as redemption credits any shares of the Institutional Spoke redeemed during that fiscal year, including shares redeemed in connection with the liquidation of Prospect Hill; and

3. Under Section 17(a) of the 1940 Act and the rules of the Commission adopted thereunder if they proceed with the Despoking Transaction as outlined above in reliance on the availability of the exception from the prohibitions of Section 17(a) set forth in Rule 17a-8.

Shareholder Voting Requirements Under Section 15 of the 1940 Act

Section 15(a) of the 1940 Act requires initial shareholder approval of an investment company's investment advisory contract. Generally, any material change in an investment advisory agreement creates a new contract that must be approved in accordance with Section 15. The purpose of Section 15 is to protect shareholders of a regulated investment company against conflicts of interest and overreaching or otherwise detrimental investment advisory agreements.

On November 29, 1994, the shareholders of both the Retail and Institutional Spokes approved the present Advisory Agreement between ZAMI and The Prime Portfolios (on behalf of the Prime Money Market Portfolio). The terms of the proposed new advisory agreement will be substantially identical to those of the present Advisory Agreement, including the identity of the investment adviser and advisory personnel, the assets to be managed and the advisory fee structure. The only difference is that the identity of the investment company housing the assets to be managed will change from The Prime Portfolios to Principal Preservation. As there will be no substantive change in the agreement that the shareholders recently approved, we believe both the purpose and the spirit of Section 15 would be fulfilled without another vote of the shareholders of the Retail Spoke or the shareholders of the Institutional Spoke.

Additionally, although we have found no precedent directly on point that provides guidance in the context of a Hub and Spoke[®] restructuring, in prior no-action correspondence the Commission staff has granted relief where technical compliance with Section 15 was not met in situations involving mergers and reorganizations of investment companies. *See, e.g.*, Institutional Liquid Assets, Inc. (available May 28, 1978); USAA Capital Growth Fund, Inc. (available October 8, 1980); Scudder Common Stock Fund Incorporated (available October 10, 1984); Templeton Growth Fund, Ltd (available February 4, 1987). Additionally, the Staff has granted no-action relief where, through clerical error, an investment advisory contract expired (Advisers Management Trust, available November 15, 1985), and where an investment company's advisory fees would be reduced without prior shareholder approval. *See, e.g.*, Washington Mutual Investors Fund, Inc. (available May 14, 1993); USAA Mutual Fund, Inc. (January 30, 1990). The primary factors considered by the staff in granting no-action relief in those instances were that the shareholders had initially approved the prior agreement, the obligations of the investment adviser under the new agreement were materially unchanged and the shareholders were not adversely affected.

Although the transactions in those cases differ factually from the one at hand, the rationales which supported no-action relief in those cases apply with equally compelling force here. To require an additional meeting/vote of shareholders of the Retail Spoke or the Institutional Spoke under these circumstances would serve no useful purpose and, in the case of the Retail Spoke, would impose a significant, needless expense. Accordingly, we request that the staff confirm that it would not recommend any enforcement action against Principal Preservation or Prospect Hill if the proposed new advisory agreement were adopted, entered into, and implemented in connection with the Despoking Transaction without first obtaining approval from the present shareholders of the Retail Spoke or the Institutional Spoke.

Redemption Credits Under Rule 24f-2 of the 1940 Act

The Despoking Transaction also raises an issue under Rule 24f-2 of the 1940 Act regarding the retention of redemption credits. Variations of this issue have been the subject of favorable no-action responses by the

Staff in the past and are the subject of a newly-adopted amendment to Rule 24f-2. *See, e.g.,* The Victory Funds (available April 24, 1995); Kemper Total Return (available February 6, 1995); Lazard Freres Institutional Fund, Inc. (available February 26, 1987).

Rule 24f-2 under the 1940 Act permits an open-end investment company to register an indefinite amount of securities under the 1933 Act. The rule requires funds that elect to register an indefinite number of securities to file a notice every year setting forth the number and amount of securities sold in the past fiscal year. Subsection (c) of Rule 24f-2 provides that when a Rule 24f-2 Notice of an open-end investment company is filed within 60 days after the close of a fiscal year, the 1933 Act registration fee to be paid at the time of the filing of such amendment may be computed by reducing the maximum aggregate offering price of the securities being registered by the maximum aggregate price of the securities of the same class redeemed or repurchased by the issuer in that fiscal year. As the staff has noted, the ability to net redemptions is based upon fairness: "A registration fee calculation method that does not allow netting may result in inordinately high registration costs for open-end management companies and their shareholders and may unfairly burden the registration process." Kemper Total Return (available February 6, 1995).

If an investment company proposes to "cease operation," that company must file a post-effective amendment terminating the Rule 24f-2 declaration prior to that company's cessation of operations. Rule 24f-2(b)(3). Recently adopted amendments to Rule 24f-2(b)(3) have expanded the application of paragraph (b)(3) of Rule 24f-2 and permit the transfer of redemption credits when assets and liabilities of an existing fund are merged or otherwise transferred into the portfolio of a newly-created series of another fund. Securities Act Release No. 33-7208, Investment Company Act Release No. 21332 (September 1, 1995).

The amendments to Rule 24f-2(b)(3) adopt and expand upon the staff's previous no-action responses. In Lazard Freres, the staff noted that it would no longer respond to letters requesting relief where an acquiring fund wishes to utilize redemption credits of an acquired fund if the acquiring company adopts the acquired company's registration statement pursuant to Rule 414 under the 1933 Act. Additionally, in a subsequent letter the staff stated that:

We believe that a shell series that assumes the assets and liabilities of an acquired fund should be able to use the acquired fund's 24f-2 redemption credits if the two funds have the same investment objectives and policies and the same or affiliated investment advisers. In those circumstances, the acquiring fund is continuing the acquired fund's business, and each shareholder of the acquired fund, immediately after the reorganization, would own the same pro rata interest in the same portfolio of securities as he or she owned immediately before the reorganization. (citations omitted).

The Victory Funds (available April 24, 1995).

The facts presented here do offer a slight variation from the newly-adopted amendments and the previously-mentioned no action responses. Specifically, under our facts, the Institutional Spoke will be reorganized into a *newly-created class* (the Institutional Class) of the Cash Reserve Portfolio, which will succeed to all of the assets and liabilities of the Institutional Spoke. This difference, we believe, does not change the underlying analysis utilized by the staff in previous letters and the policy reasons underlying the adoption of the amendments to Rule 24f-2. Accordingly, we believe that, in calculating its registration fees for the calendar year in which the Despoking Transaction occurs, it is appropriate for Principal Preservation to utilize redemption credits of the Institutional Spoke relating to that year (including redemption credits for all shares redeemed by the Institutional Spoke in connection with the liquidation of the Institutional Spoke).

Affiliated Transactions Under Section 17(a) of the 1940 Act

The Despoking Transaction also raises issues under Section 17(a) of the 1940 Act. This section has received the attention of the staff in past letters. *See, e.g.*, MFS Lifetime Investment Program (available May 24, 1993); Aegon USA Managed Portfolios, Inc., Investment Company Act Release No. 18739 (available May 29, 1992); Locust Street Fund (available May 14, 1991); New England Mutual Life Insurance Co., (available June 3, 1987); Thomson McKinnon Global Trust (available December 18, 1986).

Section 17(a) of the 1940 Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company or a company controlled by the investment company. Congress included this section in the 1940 Act to protect shareholders by prohibiting a purchase or sale transaction when a party to the transaction has both the ability and pecuniary incentive to influence the actions of the investment company. *See* Investment Company Act Release No. 10886 (October 3, 1979), citing Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., 17 (1940).

Rule 17a-8 of the 1940 Act excepts from the prohibitions of Section 17(a) mergers or consolidations of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers; provided that certain conditions are satisfied. To satisfy these conditions, the board of directors of each of the affiliated registered investment companies participating in the transaction, including a majority of the directors of each investment company who are not interested persons of either of the participating registered investment companies, must determine:

- (1) that participation in the transaction is in the best interests of that registered investment company; and
- (2) that the interests of existing shareholders of that registered investment company will not be diluted as a result of effecting the transaction.

This rule is based on the rationale that when a merger involves investment companies that are affiliated persons exclusively by virtue of sharing common officers, directors, and/or an investment adviser, no person whom is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest to improperly influencing the terms of the reorganization. *See* Investment Company Act Release No. 10886 (October 3, 1979). The Rule also reinforces the fundamental policy that shareholders of each investment company involved in the reorganization are entitled, as a matter of fundamental fiduciary principles, to have their directors act in the best interest of the fund's shareholders.

If funds are affiliated in a manner other than that specified in Rule 17a-8, the funds may need to obtain an order approving the transaction pursuant to section 17(b). Specifically, in Footnote 9 to the proposing Release, the Commission stated that when the affiliation is based upon "a person owning 5% or more of the outstanding securities [of the relevant entities] . . . , the owner . . . would be presumed to have certain potential abilities to influence the terms of the transaction, in which . . . he may have a particular financial interest." In certain situations, the staff has declined to grant no action relief to such a request. In New England Mutual Life Insurance Co. (available June 3, 1987), the staff determined that, because two separate accounts were affiliated with each other not only by having a common investment adviser but also by being under the control of the same sponsoring insurance company, it could not grant no action relief.

Additionally, in Locust Street Fund (available May 14, 1991) the staff declined to grant no action relief because a common investment adviser, in addition to nominally owning a majority of the shares of both investment companies, beneficially owned more than five percent of one company during the period of negotiations. The staff noted:

[The investment adviser's] beneficial ownership of between 4.518% and 6.305% of the outstanding shares of Locust Street during the period in which it negotiated the merger terms provided it with both a pecuniary interest in the transaction and the ability to influence the terms of the proposed transaction.

However, in other analogous situations, the staff has granted no action relief. In Aegon USA Managed Portfolios, Inc., the staff granted no action relief where the parent of an investment adviser, owned, through its subsidiaries, five percent or more of the shares of the funds. Additionally, in Thomson McKinnon Global Trust (available December 18, 1986), the staff granted no-action relief where the distributor of the two funds nominally owned shares of both companies, could vote those shares only in accordance with the instructions of the beneficial owners, and refrained from voting the shares of beneficial owners that did not provide voting instructions.

Although not free from argument, for purposes of this letter we are assuming that, based on the interrelationships among The Prime Portfolios, Prospect Hill and ZAMI discussed above (including ZAMI's record ownership of shares of the Institutional Spoke and the fact that the Institutional Spoke and the Retail Spoke each own in excess of 5% of the outstanding voting securities of the Hub), the Retail Spoke and the Institutional Spoke are affiliates, or affiliates of affiliates, of each other.

We believe that the proposed Despoking Transaction nonetheless should be governed by Rule 17a-8 consistent with the no-action relief granted in Thomson McKinnon Global Trust. Notwithstanding the staff's response to Locust Street Fund, the Commission has adopted Rule 17a-8 by concluding that the transactions excepted by the Rule should be subject to the staff's specific (i.e., case by case) review. We believe it is important to note that the Despoking Transaction is being proposed solely for the purpose of potentially reducing the expenses of the Spokes thereby benefitting the shareholders. Neither ZAMI nor any of its affiliates anticipates any direct pecuniary benefit from the Despoking Transaction. ZAMI, like the management and the Boards of Principal Preservation and Prospect Hill, anticipates that a reduced expense ratio will make the funds more competitive and hopefully attract more assets. Asset growth would increase advisory fees earned by ZAMI and at the same time would increase efficiencies and create economies of scale that potentially would enhance yield and shareholder return. We do not believe these anticipated mutual benefits create any conflicts of interest between ZAMI and the shareholders of the Spoke, and, therefore, do not believe the proposed Despoking Transaction raises concerns that the legislature sought to address in adopting Section 17(a).

Nonetheless, ZAMI has determined that, for purposes of obtaining shareholder approval of the proposed Despoking Transaction, it will pass through voting power over the shares of the Institutional Spoke which it holds in privately managed accounts to the account owners in a manner consistent with that described in the Thomson McKinnon no-action request. In other words, ZAMI will vote such shares only at, and in accordance with, direction received from the account owners. Moreover, consistent with the intent of Rule 17a-8, Prospect Hill's Board of Trustees, including the non-interested Trustees, prior to approving the Despoking Transaction, must find that it is in the best interest of the Institutional Spoke's shareholders. Based upon the foregoing, we believe that this situation is consistent with the policy of Rule 17a-8; that "no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant interest in improperly influencing these terms."

Nor do we believe that any policy considerations are implicated by virtue of the fact that the Institutional Spoke and the Retail Spoke each own in excess of 5% of the outstanding voting securities of the Hub. In this regard, it is important to bear in mind the voting procedures applicable to the Hub and Spoke Structure. When matters requiring shareholder approval at the Hub level arise, the Spokes are required to pass the voting rights through to their respective shareholders, and the Spokes must cast all of their votes in the Hub in proportion to the votes received from their respective shareholders. The Spokes in essence are mere conduits to their respective shareholders with respect to Hub voting matters. The Spokes' shareholders are the ones who in reality hold voting power in the Hub. We therefore do not believe that the Spokes' ownership of in excess of 5% of the outstanding voting securities of the Hub raises any "affiliate" or "control" implications under the 1940 Act. On a more technical note, we would also point out that, immediately prior to the Retail Spoke's issuance of shares of its Institutional Class to the Institutional Spoke, each of the Retail Spoke and the Institutional Spoke will have withdrawn their respective assets from the Hub. Accordingly, at the time the Retail Spoke issues shares of its Institutional Class to the Institutional Spoke, neither of the Spokes will own any voting securities of the Hub. For these reasons, we do not believe that the Spokes' respective ownership interests in the Hub raises any policy issues under Section 17(a) of the 1940 Act.

In short, we believe that the Despoking Transaction is consistent with the policies underlying Rule 17a-8. We therefore ask that the staff confirm that it will not recommend enforcement action against Prospect Hill and/or Principal Preservation under Section 17 of the 1940 Act if the Despoking Transaction is implemented as described above.

Thank you in advance for your consideration of this request. If you have any questions or would like any additional information or documents, please call the undersigned at (414) 277-5309, or, in my absence or unavailability, please direct your inquires to Conrad G. Goodkind of this office at (414) 277-5305.

Very truly yours,

QUARLES & BRADY



Fredrick G. Lautz

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JAN 11 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 95-616-CC
Principle Preservation
Portfolios, Inc. and
Prospect Hill Trust
File Nos. 811-4401 and
811-7424

By letter dated December 6, 1995, you request assurance that the staff would not recommend enforcement action to the Commission under Sections 15(a), 17(a), or 24(f) of the Investment Company Act of 1940 ("1940 Act") or Rules 17a-8 or 24f-2 thereunder if Principle Preservation Portfolios, Inc. ("Principle Preservation") and Prospect Hill Trust ("Prospect Hill") participate in the proposed reorganization transaction in the manner described in your letter. 1/

Principal Preservation and Prospect Hill each are registered under the 1940 Act as open-end, series investment companies. Principle Preservation's retail money market series is known as the Cash Reserve Portfolio (the "Retail Fund"). Prospect Hill's institutional money market series is known as the Prospect Hill Prime Money Market Fund (the "Institutional Fund"). The Retail Fund and the Institutional Fund are feeder funds in a master-feeder arrangement in which the master fund is The Prime Money Market Portfolio (the "Master Fund"), a series of The Prime Portfolios, a registered investment company. The Retail Fund and the Institutional Fund are the only feeder funds currently invested in the Master Fund.

Ziegler Asset Management, Inc. (the "Adviser") serves as the investment adviser to the Master Fund pursuant to the terms of an investment advisory agreement between the Adviser and The Prime Portfolios (on behalf of the Master Fund) (the "Current Agreement"). The Current Agreement was approved by shareholders of the Institutional Fund and by shareholders of the Retail Fund, and by each of the Funds as shareholders of the Master Fund, on November 29, 1994.

As described more fully in your letter, the proposed reorganization transaction involves the conversion of the current master-feeder structure into a multi-class arrangement within the Cash Reserve Portfolio (the "Despoking Transaction"). The Despoking Transaction consists of a series of steps pursuant to which (1) the board of directors of Principal Preservation will designate two classes of authorized shares of common stock within the Cash Reserve Portfolio (the "Retail Class" and the "Institutional Class"); (2) the board of directors of Principal Preservation and the board of trustees of Prospect Hill will exercise their discretion to withdraw from the Master Fund the

1/ This letter confirms the advice given to you in a telephone conversation between Natalie Bej of this office and Fred Lautz of Quarles & Brady, counsel to Principal Preservation and Prospect Hill, on December 27, 1995.

respective assets of the Retail and Institutional Funds (subject to the liabilities of the Master Fund); (3) all of the outstanding shares of the Retail Fund will be redesignated as shares of the Retail Class; (4) Principal Preservation will issue to Prospect Hill, in exchange for all of the assets (subject to the liabilities) of the Institutional Fund, shares of the Institutional Class valued at \$1.00 per share; (5) The Prime Portfolios (including the Master Fund) and Prospect Hill (including the Institutional Fund) will be liquidated; and (6) shares of the Institutional Class will be distributed to the shareholders of the Institutional Fund on a pro rata basis. Upon completion of the proposed Despoking Transaction, the Adviser will enter into a new investment advisory agreement (the "New Agreement") with Principal Preservation to manage the assets of the Cash Reserve Portfolio.

You request that the staff confirm that it will not recommend enforcement action to the Commission if (1) the parties proceed with the Despoking Transaction without seeking approval of the New Agreement by the current shareholders of the Retail and Institutional Funds, (2) in computing its registration fees for the fiscal year in which the Despoking Transaction is consummated, Principal Preservation includes as redemption credits any shares of the Institutional Fund redeemed during that fiscal year, and (3) the parties proceed with the Despoking Transaction in reliance on Rule 17a-8 under the 1940 Act.

Section 15(a)

Section 15(a) of the 1940 Act provides generally that no person may serve as an investment adviser to a registered investment company except pursuant to a written contract that, among other things, has been approved by the vote of a majority of the company's outstanding voting securities.

You represent that the terms and conditions of the New Agreement will be identical to the terms and conditions of the Current Agreement, including the identity of the Adviser and advisory personnel, the management services to be provided, the assets to be managed, and the rate of compensation to be paid. You represent that the only material difference between the Current and New Agreements is that the identity of the investment company holding the assets to be managed will change from The Prime Portfolios to Principal Preservation. You assert that, in the context of a despoking transaction, when shareholders of a feeder fund previously have approved the master fund's advisory contract, a substantially identical contract between the feeder fund and the master fund's adviser should not be deemed to be a new contract requiring an additional shareholder vote for

purposes of Section 15(a). 2/ You maintain that requiring Principal Preservation to call a meeting of the shareholders of the Retail Fund for the sole purpose of approving the New Agreement under these circumstances would serve no useful purpose and would impose on shareholders a significant, needless expense. 3/

Rule 24f-2

Rule 24f-2 under the 1940 Act permits an open-end fund to register an indefinite amount of securities under the Securities Act of 1933 ("1933 Act"). The rule requires funds that elect to register an indefinite number of securities to file a notice every year setting forth the number and amount of securities sold in the past fiscal year. If the notice is filed within 60 days after the close of a fiscal year, the 1933 Act registration fee may be computed based on net sales, i.e., the aggregate price of the shares sold by the fund during the year, reduced by a "redemption credit" equal to the aggregate price of the shares redeemed or repurchased in that fiscal year.

If a fund ceases operations, the date the fund ceases operations is deemed to be the end of its fiscal year. 4/ If the fund files a Rule 24f-2 notice within 60 days after ceasing operations, it will be permitted to net redemptions made between the end of the previous fiscal year and the date of ceasing operations against sales during that period. 5/ Recently adopted amendments to Rule 24f-2 permit the transfer of redemption credits when assets and liabilities of an existing fund are merged or otherwise transferred into the portfolio of a newly-created series of another fund. 6/ You state that the

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- 2/ Telephone conversation between Fred Lutz and Natalie Bej on December 26, 1995. As noted above, shareholders of both the Retail and Institutional Funds approved the Current Agreement on November 29, 1994.
- 3/ Shareholders of the Retail Fund are not being solicited in connection with the reorganization. See Form N-14 filed with the Commission on behalf of Principal Preservation on November 3, 1995 (File Nos. 33-99010 and 811-4401) ("Principal Preservation N-14").
- 4/ See Rule 24f-2(b)(3).
- 5/ Rule 24f-2(c). See Investment Company Act Rel. No. 21332 (Sept. 1, 1995) (adopting amendments to Rule 24f-2).
- 6/ Rule 24f-2(b)(3). See Release No. IC-21332, supra, note 5; see also The Victory Funds (pub. avail. Apr. 24, 1995).

amendments do not expressly apply to the Despoking Transaction, however, because the Institutional Fund will be reorganized into a newly-created class of an existing fund, rather than a newly-created series of an existing fund.

You maintain that, in calculating its registration fees for the fiscal year in which the Despoking Transaction occurs, it would be appropriate for Principal Preservation to use redemption credits of the Institutional Fund relating to that year, including redemption credits for all shares redeemed by the Institutional Fund in connection with the liquidation of the Institutional Fund. The staff has stated that it will no longer respond to letters seeking relief for an acquiring fund to use the Rule 24f-2 redemption credits of an acquired fund unless they present novel or unusual issues. ^{7/} We agree, however, that the Despoking Transaction presents a novel situation with respect to the use of redemption credits and warrants a staff response.

In prior no-action letters regarding the use of redemption credits by the surviving fund in a reorganization, the staff generally has interpreted Rule 24f-2 to not permit an acquiring fund that holds portfolio securities (*i.e.*, a fund that is not a shell) to use the redemption credits of an acquired fund. ^{8/} The staff carved out a narrow exception to this position in a letter to Kemper Total Return Fund, et. al. (pub. avail. Feb. 6, 1995) ("Kemper"), which permitted an acquiring fund that was not a shell to use redemption credits of the acquired fund where the acquired fund was reorganized into a newly-created class of the acquiring fund that had not been operational prior to the reorganization. In Kemper, the staff noted that the purpose of the reorganizations was to consolidate similar funds with different distribution options into a single fund with multiple distribution options. In granting relief, the staff placed great emphasis on the fact that each pair of reorganized funds was managed by the same adviser and portfolio manager and contained substantially the same portfolio securities, in approximately the same percentages. As part of the Despoking Transaction, the Institutional Fund will be reorganized into a newly-created class of the Cash Reserve Portfolio. Before the Despoking Transaction, the Retail Fund and the Institutional Fund each invested all of

^{7/} See CIGNA Aggressive Growth Fund, Inc. (pub. avail. Feb. 15, 1985); The Victory Funds, supra, note 6.

^{8/} See, *e.g.*, Scudder Managed Reserves, Inc. (pub. avail. May 15, 1981) (when an acquired fund is reorganized into an existing fund that is not a shell, the acquired fund's shareholders receive interests in a new fund with a portfolio different from that of the acquired fund).

its investable assets in the Master Fund. ^{9/} Therefore, before the Despoking Transaction, the Retail Fund and the Institutional Fund had the same portfolio securities, the same investment adviser and the same portfolio manager.

Rule 17a-8

Section 17(a) of the 1940 Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company or a company controlled by it. Rule 17a-8 under the 1940 Act exempts from the prohibitions of Section 17(a) mergers or consolidations of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

You state that the proposed Despoking Transaction would be exempt from the provisions of Section 17(a) by virtue of Rule 17a-8 but for two additional affiliations. First, you state that the Adviser privately manages customer accounts, some of which invest in shares of the Institutional Fund. In most cases, the Adviser holds voting power with respect to such shares. You state that, as of the date of your letter, the Adviser holds discretionary voting authority with respect to 20% of the outstanding shares of the Institutional Fund. The Adviser's record ownership of more than 5% of the outstanding voting securities of the Institutional Fund may raise an affiliation issue under Section 17(a). Second, because each of the Funds owns in excess of 5% of the outstanding voting securities of the Master Fund, the Funds may each be deemed to be affiliated with the Master Fund, and therefore may be deemed to be affiliates of affiliates with respect to each other for purposes of Section 17(a).

You maintain that the Despoking Transaction is consistent with Rule 17a-8, notwithstanding these additional affiliations, because no person with the ability to approve the transaction would have an interest in improperly influencing its terms. First, with respect to the Adviser's record ownership of Institutional Fund shares, you represent that the Adviser will pass through voting power with respect to such shares to the account owners and will vote such shares only at, and in

^{9/} See Principal Preservation N-14, supra, note 3.

accordance with, instructions received from the account owners. 10/ Second, with respect to the Funds' ownership of shares of the Master Fund, you state that the Funds are required to pass through voting rights to their respective shareholders when matters requiring shareholder approval at the Master Fund level arise, and the Funds must cast all of their votes in the Master Fund in proportion to the votes actually received from their respective shareholders. You assert, therefore, that the Funds are mere conduits for their respective shareholders with respect to Master Fund voting matters, and that the shareholders of the Funds, in reality, hold voting power in the Master Fund. Accordingly, you do not believe that the Funds' ownership of in excess of 5% of the outstanding voting securities of the Master Fund should be deemed to raise any "affiliate" or "control" implications under the 1940 Act. For these reasons, you believe that the Despoking Transaction should be governed by Rule 17a-8.

On the basis of the facts and circumstances described in your letter, and without necessarily agreeing with your legal analysis, we would not recommend that the Commission take enforcement action (1) under Section 15(a) of the 1940 Act, if the parties proceed with the Despoking Transaction without seeking approval of the New Agreement by the current shareholders of the Retail Fund or the current shareholders of the Institutional Fund, 11/ (2) under Section 24(f) of the 1940 Act or Rule 24f-2 thereunder if, in computing its registration fees for the fiscal year in which the Despoking Transaction

10/ Cf. Thomson McKinnon Global Trust (pub. avail. Dec. 18, 1986) (staff granted no-action relief under Rule 17a-8 where the distributor of the funds nominally owned both funds' shares, could vote those shares only in accordance with the instructions of beneficial owners, and refrained from voting shares of beneficial owners that did not provide voting instructions).

11/ Our position under Section 15(a) is based in particular upon your representation that the terms and conditions of the New Agreement are identical to those of the Current Agreement with respect to the identity of the Adviser and advisory personnel, the management services to be provided, the assets to be managed and the rate of compensation to be paid. Cf. Limited Term Municipal Fund, Inc. (pub. avail. Nov. 17, 1993) (staff granted relief under Section 15(a) to allow a fund's advisory fees to be reduced without prior shareholder approval where the change would not reduce or modify in any respect the services provided by the adviser to the fund and the change had no effect other than to reduce the percentage of the fund's assets to be paid to the adviser).

occurs, Principal Preservation includes as redemption credits the aggregate redemption price of any shares of the Institutional Fund redeemed during that fiscal year, 12/ and (3) under Section 17(a) of the 1940 Act if the parties proceed with the Despoking Transaction in reliance on Rule 17a-8 under the 1940 Act. 13/

This response expresses the Division's position on enforcement action only and does not express any legal conclusions on the issues presented. Because this position is based on the facts and representations made in your letter, you should note that any different facts or circumstances might require a different conclusion.

Natalie S. Bej
Natalie S. Bej
Attorney

12/ Our position under Section 24(f) and Rule 24f-2 is based in particular upon the statement in the Principal Preservation N-14 that, before the Despoking Transaction, the Retail Fund and the Institutional Fund each invested all of its investable assets in the Master Fund and therefore had the same portfolio securities, the same investment adviser and the same portfolio manager. The positions taken in this letter and in the Kemper letter represent a narrow exception to the staff's interpretation of Rule 24f-2 with respect to the use of redemption credits by the surviving fund in a reorganization of two previously operating funds, which was set forth in Scudder Managed Reserves, supra, note 8. While these letters may be relied upon by funds that have similar facts and circumstances, they should not be read as signalling a substantial modification of the position taken in the Scudder letter.

13/ Our position under Section 17(a) and Rule 17a-8 is based in particular upon your representations regarding the pass-through voting arrangements in effect with respect to approval of the Despoking Transaction. This position should not be read, however, as indicating agreement with your statement to the effect that the feeder funds' ownership of more than 5% of the outstanding voting securities of the Master Fund does not raise any "affiliate" or "control" implications under the 1940 Act.