

ACT ICA  
SECTION 3(c)(11)  
RULE \_\_\_\_\_  
PUBLIC \_\_\_\_\_  
AVAILABILITY 2-2-00

February 2, 2000  
IM Ref. No. 99-443  
General Motors Investment  
Management Corporation  
File No. 801-42732

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Your letter of January 28, 2000 requests our concurrence that the collective investment trust described in your letter will be "maintained by a bank" for purposes of Section 3(c)(11) of the Investment Company Act of 1940 and Section 3(a)(2) of the Securities Act of 1933.

Facts

You state that the General Motors savings plans master trust holds assets of employee benefit plans, including assets of participant-directed employee benefit plans that are qualified under Section 401(k) of the Internal Revenue Code ("401(k) plans"), for employees of the General Motors Corporation ("GM") and its affiliates. You state that the 401(k) plans provide various investment options, including one option for each of the following four classes of company stock: GM \$1-2/3 par value common stock ("GM Classic Common"), GM Class H common stock, Electronic Data Systems Corporation ("EDS") common stock, and Raytheon Company Class A common stock (collectively "Company Stock").<sup>1</sup> You further state that, prior to May 28, 1999, employees of Delphi Automotive Systems Corporation ("Delphi"), an affiliate of GM, contributed to these 401(k) plans.

You state that on May 28, 1999, as a consequence of GM spinning off Delphi, a savings plans master trust was created to hold assets of 401(k) plans sponsored by Delphi for its employees ("Delphi savings plans master trust"). These 401(k) plans offer an investment option for Delphi common stock (also referred to as "Company Stock").<sup>2</sup> In addition, these 401(k) plans make available investment options that are clones of the 401(k) plans in the GM savings plans master trust, except that Delphi employees cannot continue to make new contributions in any non-Delphi Company Stock option.

You also state that on May 28, 1999, State Street Bank and Trust Company ("Bank") established a collective investment trust ("Trust") for the purpose of holding and managing assets of 401(k) plans participating in the GM savings plans master trust and the Delphi savings plans master trust. You explain that the Trust consists of five separate funds, one for each of the five classes of Company Stock (each a "Company

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<sup>1</sup> You state, however, that employees of GM and their affiliates may no longer make new contributions or exchanges with respect to EDS common stock and Raytheon Company common stock.

<sup>2</sup> You state that, as a further consequence of the merger, GM and GM-affiliated participants (and their respective plans) that held interests in GM Classic Common received interests in Delphi common stock. These participants, however, may not obtain any additional interests in this stock.

Stock Fund”). The objective of each Company Stock Fund is to seek long-term growth of capital and current income by investing solely in shares of its respective class of Company Stock. You state, however, that each Company Stock Fund also may invest in short-term investments to provide the Fund with the liquidity necessary to meet its daily cash requirements.

You state that the Bank is the sole discretionary trustee of the Trust, and in that capacity acts as the sole investment manager of each Company Stock Fund. You explain that the Bank determines the manner and timing of purchases and sales of Company Stock for each Fund.<sup>3</sup> In addition, you state that the Bank selects, purchases and sells short-term investments for each Company Stock Fund.<sup>4</sup> You state that the Bank manages each Company Stock Fund in such a manner as to replicate as closely as possible the performance of the Company Stock held by that Fund while ensuring that the Fund continues to maintain the liquidity level that the Bank believes is necessary for the Fund to meet daily cash requirements.

### Analysis

Section 3(c)(11) of the Investment Company Act, in relevant part, excludes from the definition of investment company “[a]ny employee’s stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986 . . . or any collective trust fund maintained by a bank consisting solely of assets of such trusts . . . .” We take the position that a collective trust fund is “maintained by a bank” for purposes of Section 3(c)(11) if the bank exercises “substantial investment responsibility” over the collective trust fund.<sup>5</sup> We also take the position that a bank which functions in a mere custodial or similar capacity will not satisfy the “maintained by a bank” requirement.<sup>6</sup>

You believe that the Trust is “maintained by a bank”<sup>7</sup> for purposes of Section 3(c)(11) of the Investment Company Act.<sup>8</sup> You argue that the “maintained by a bank”

<sup>3</sup> You explain, however, that although the Bank is required to invest each Company Stock Fund in the requisite class of Company Stock to the maximum extent feasible, the Bank, as a part of its fiduciary obligations under the Employee Retirement Income Security Act of 1974 (“ERISA”), has the ongoing responsibility to perform all investment management functions required by each Fund, including determining whether the Fund’s continued retention of the requisite class of Company Stock is consistent with the general fiduciary requirements of ERISA.

<sup>4</sup> You state that, where necessary, the Bank also may enhance a Fund’s liquidity by, among other things, obtaining loans or lines of credit on behalf of the Fund.

<sup>5</sup> See, e.g., Employee Benefit Plans, Securities Act Release No. 6188 (Feb. 19, 1980) (“Employee Benefit Plans Release”); Bank of America (pub. avail. Jan. 9, 1972).

<sup>6</sup> *Id.*

<sup>7</sup> You represent that the Bank meets the definition of “bank” in Section 2(a)(5) of the Investment Company Act and Section 3(a)(2) of the Securities Act.

requirement is met with respect to a collective investment trust that is comprised of separate single stock funds, when the bank exercises substantial investment responsibility with respect to each of those funds. You believe that a bank exercises "substantial investment responsibility" with respect to the management of this type of trust if the bank exercises all or substantially all of the investment responsibility required in managing the trust, even though the scope of investment responsibility exercised in managing this type of trust is limited. You further believe that the Bank exercises "substantial investment responsibility" with respect to its management of the Trust, and that its activities extend beyond mere custodial functions.

We agree that a collective investment trust with respect to unrelated employers comprised of separate single stock funds are "maintained by a bank" for purposes of Section 3(c)(11) of the Investment Company Act if the bank exercises substantial investment responsibility with respect to each of those funds. We also agree that a bank is exercising substantial investment responsibility if the bank exercises all or substantially all of the investment responsibility required in managing the trust.

Based on the facts and representations set forth in your letter, we agree that the Bank exercises substantial investment responsibility with respect to its management of the Trust. We therefore agree that the Trust is "maintained by a bank" for purposes of Section 3(c)(11) of the Investment Company Act. You should note that any different facts or representations might lead to a different conclusion.<sup>9</sup>

The staff of the Division of Corporation Finance has asked us to tell you that, based on the facts presented and representations made in your letter, the Division concurs in your interpretive view that the Trust appropriately may be deemed "maintained by a bank" for purposes of the requirements applicable to collective trusts under Section 3(a)(2) of the Securities Act. You have not sought the Division's views on, and it therefore does not address, the Securities Act status of the plan interests described in your letter. Because this position is based on the facts outlined, and the representations made, in your letter, as well as your interpretive view, any different facts or conditions might compel a different conclusion.



Rochelle Kauffman Plesset  
Senior Counsel

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<sup>8</sup> You believe that both the GM savings plans master trust and the Delphi savings plans master trust may rely on the exclusion in Section 3(c)(11) of the Investment Company Act because each trust would be comprised solely of assets of employee benefit plans that are sponsored by one employer and certain of its affiliates and that are qualified under Section 401 of the Internal Revenue Code. You do not ask for our position, and we take no position, regarding this issue.

<sup>9</sup> We previously informed you of this position in a telephone conversation on May 26, 1999.

# KIRKLAND & ELLIS

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Section 3(c)(11) of the Investment Company Act of 1940;  
Section 3(a)(2) of the Securities Act of 1933

January 28, 2000

Douglas Scheidt  
Chief Counsel, Division of Investment  
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Securities and Exchange Commission  
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Washington, D.C. 20549

Catherine Dixon  
Chief Counsel, Division of Corporation  
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450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20549

Re: Request for Interpretation of Section 3(c)(11) of the Investment Company Act of 1940 and Section 3(a)(2) of the Securities Act of 1933

Dear Mr. Scheidt and Ms. Dixon:

On behalf of our client, General Motors Investment Management Corporation ("GMIMCo"), we respectfully request that the staff ("Staff") of the Securities and Exchange Commission ("Commission") confirm our interpretation that a collective investment trust with respect to unrelated employers comprised of separate single stock funds that are managed by a bank, as described below, will be "maintained by a bank" for purposes of Section 3(c)(11) of the Investment Company Act of 1940 ("ICA") and Section 3(a)(2) of the Securities Act of 1933 ("Securities Act"). This letter is an amended and restated version of a letter submitted on May 21, 1999 requesting such an interpretation. The changes in this letter address certain issues raised during discussions with the Staff subsequent to the filing of the May 21, 1999 letter.

## I. Background

There presently exists a General Motors savings plans master trust. This trust is comprised of plans for salaried and hourly employees of General Motors Corporation ("GM") and GM affiliates qualified under Internal Revenue Code ("IRC") Sections 401(a), some of which are also participant-directed plans qualified under Section 401(k) ("401(k) plans"). Prior to May 28, 1999, (a) Delphi Automotive Systems Corporation ("Delphi") was a GM affiliate, (b) salaried and

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 2

hourly employees of Delphi contributed to the plans in this trust, and (c) this trust relied on the exemption in ICA Section 3(c)(11) for trusts with respect to related employers.<sup>1</sup> The 401(k) plans in this trust currently provide various investment options, including four separate company stock accounts, one each for GM \$1-2/3 par value common stock ("GM Classic Common"), GM Class H common stock ("GMH"), Electronic Data Systems Corporation common stock, and Raytheon Company Class A common stock (collectively "Company Stock"). See Attachment A. Also, as discussed below, a limited investment option for holding Delphi common stock was created on May 28, 1999.

On May 28, 1999, Delphi was spun off and is no longer a related employer of GM. A new Delphi savings plans master trust was created that is comprised solely of assets of cloned plans sponsored by Delphi for its salaried and hourly employees. The Delphi savings plans master trust relies on the exemption in ICA Section 3(c)(11) and Securities Act Section 3(a)(2) for trusts with respect to related employers since it is comprised solely of assets of plans sponsored by Delphi and its affiliates that are qualified under IRC Section 401.

On May 28, 1999, all Delphi employee plan assets in the GM savings plans master trust were moved to the Delphi savings plans master trust except that 401(k) plan assets of certain Delphi hourly employees contributed prior to May 28, 1999 remain under the GM-sponsored 401(k) plan and in the GM savings plans master trust but are treated in the same manner as 401(k) plan assets of any other former employees of GM or a GM-affiliate (e.g., there may be no further contributions made to the GM-sponsored 401(k) plans by those former employees).<sup>2</sup> Accordingly, the GM savings plans master trust continues to be comprised solely of assets of plans

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<sup>1</sup> A similar analysis applied with respect to the exemption available under Section 3(a)(2) of the Securities Act. In both contexts, the exemption has been interpreted to mean a trust holding assets of plans maintained by a group of related employers.

<sup>2</sup> As of May 28, 1999, contributions to 401(k) plans in the GM savings plans master trust by or on behalf of these Delphi hourly employees were no longer permitted. However, such employees are permitted to transfer assets in the GM Classic Common and GMH 401(k) plan accounts to and from other 401(k) plan investment accounts. Such employees are also permitted to participate in one of the 401(k) plans established under the Delphi savings plans master trust with respect to the post-May 28, 1999 period.

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 3

sponsored by related employers and continues to rely on the exemption in ICA Section 3(c)(11) and Securities Act Section 3(a)(2) for trusts with respect to related employers.

The 401(k) plans in the Delphi savings plans master trust offer an investment option for Delphi common stock (also referred to herein as "Company Stock"). The 401(k) plans in the Delphi savings plans master trust also make available on a cloned basis all of the investment options under the 401(k) plans in the GM savings plans master trust except that there may be no new contributions to the non-Delphi Company Stock investment options previously available through the GM savings plans master trust.

Effective May 28, State Street Bank and Trust Company (the "Bank"), a Massachusetts chartered trust company and a member of the Federal Reserve System, established, pursuant to a Declaration of Trust, a collective investment trust, herein referred to as Trust X, for the purpose of holding and managing 401(k) plan assets of the GM savings plan master trust and the new Delphi savings plan master trust. The Bank is the sole discretionary trustee of Trust X. The Bank has advised that it currently acts as trustee of collective investment trusts with assets in excess of \$400 billion. Under the terms of the Declaration of Trust, the Bank may amend and modify the terms of Trust X or terminate Trust X, in either case upon prior written notice to GMIMCo, acting on behalf of the participating master trusts.<sup>3</sup> The participating master trusts do not have the right or authority to amend or modify Trust X or terminate Trust X, although GMIMCo may determine to discontinue (or reduce) the participation of each of the master trusts participating in Trust X by causing redemption of all or any portion of their units in the separate funds established under Trust X as described below. The assets in Trust X are limited solely to plans that meet the requirements for qualification under Section 401 of the Internal Revenue Code.

Trust X consists of five separate funds, one for each of the five classes of Company Stock referred to above. All shares of a class of Company Stock held by plans participating in the GM and Delphi savings plans master trusts will be held and managed in the

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<sup>3</sup> GMIMCo, a direct wholly-owned subsidiary of GM, is a named fiduciary (as that term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), for the plans participating in the GM and Delphi master savings plans trusts. In that regard, GMIMCo has authority to cause assets in those master trusts to be invested in Trust X.

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 4

separate fund established under Trust X for that class. See Attachment B. Each such fund in Trust X is referred to herein as a "Company Stock Fund."

## II. The Company Stock Funds

Each Company Stock Fund holds one of the five classes of Company Stock and a certain amount of short-term liquid assets. The objective of each Company Stock Fund is to seek long-term growth of capital and current income by investing solely in shares of the respective class of Company Stock except for short-term liquid assets to the extent deemed necessary in light of the liquidity considerations described below. Commencing on May 28, 1999, participating plans (based on plan participant choices) are permitted to acquire or redeem units of Company Stock Funds through their respective master trusts, subject to the following:

1. *GM Classic Common*. This Fund is available for new contributions from employees of GM and GM affiliates only. No exchanges are permitted into the Fund by Delphi salaried plan participants and certain Delphi hourly plan participants.
2. *GMH*. This Fund is available for new contributions from employees of GM and GM affiliates only. No exchanges are permitted into the Fund by Delphi salaried plan participants and certain Delphi hourly plan participants.
3. *Electronic Data Systems Corporation Common Stock*. This investment option is not available for any new contributions or exchanges into the Fund. Accordingly, participants are only permitted to redeem already-owned units of this Fund. It is anticipated that this Fund will be liquidated in approximately two years.
4. *Raytheon Company Class A Common Stock*. This investment option is not available for any new contributions or exchanges into the Fund. Accordingly, participants are permitted to redeem already-owned units of this Fund. It is anticipated that this Fund will be liquidated in approximately three and one-half years.

5. *Delphi Common Stock.* This Fund is available for new contributions from Delphi employees only except that each participant under any plan having an interest in GM Classic Common held under the plan on May 25, 1999 also was given an interest in the Delphi Company Stock Fund to reflect the shares distributed to GM Classic Common shareholders by reason of the Delphi spinoff. After May 28, 1999, GM and GM-affiliate participants (and their respective plans) are only permitted to redeem already-owned units of this Fund.

### III. Management of Trust X

As noted above, the Bank serves as the sole discretionary trustee of Trust X,<sup>4</sup> and in that capacity acts as the sole investment manager of all of the assets held in each of the Company Stock Funds. The Bank is a "bank" as defined in ICA Section 2(a)(5) and Securities Act Section 3(a)(2). While the investment guidelines with respect to a Company Stock Fund call for it to invest to the maximum extent feasible in a class of Company Stock, as a fiduciary under ERISA, the Bank has the ongoing responsibility to perform all investment management functions needed by each of the Company Stock Funds, including determining whether continued retention of a particular class of Company Stock is consistent with the general fiduciary requirements of ERISA.<sup>5</sup>

The Bank's specific duties with respect to each Company Stock Fund involve the same type of trust and investment management functions associated with bank-maintained collective investment trusts which it has customarily operated,<sup>6</sup> which include seeking to:

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<sup>4</sup> The Bank also serves as the sole directed trustee of both the General Motors savings plans master trust and the Delphi savings plans master trust.

<sup>5</sup> As noted below, voting and tender decisions are exercisable at the direction of the plan participants (subject to certain arrangements with unions with respect to voting decisions) subject to the Bank's overriding fiduciary obligations under ERISA.

<sup>6</sup> These, as is readily apparent, extend beyond mere custodial functions.

1. assure that the Fund has an appropriate level of liquidity to meet its ongoing daily cash requirements and implement alternative methods for raising liquidity and making related investments when judged necessary by the Bank (see III. A below);
2. achieve best execution with minimal transaction costs when the Bank determines that it is necessary to buy or sell Company Stock (see III. B below);
3. maximize the investment in Company Stock so that Fund performance tracks to the extent practicable actual stock performance consistent with liquidity requirements (see III. C below).

A. *The Bank makes all investment decisions affecting liquidity and exercises discretion with respect to the purchase and sale of money market investments, including investments in affiliated short-term investment funds for which the Bank acts as discretionary trustee.*

The Bank has exclusive authority to determine liquidity targets for each Company Stock Fund based on all relevant facts and circumstances, including plan-related information provided by GMIMCo. The Bank monitors liquidity levels and adjusts liquidity target levels on a periodic basis based on experience and other relevant information that becomes available (e.g., plan changes, demographic changes, etc.). Participant balance, volume and trading patterns result in actual liquidity levels varying materially around the target.

The Bank is responsible for making the day-to-day adjustments to bring actual liquidity levels closer to the targets. For example, when liquidity begins to deplete, the Bank typically conducts a cash flow analysis that includes an examination of the amount and timing of the next scheduled contribution(s)/loan repayments, estimated future redemptions, and any trades previously placed but not settled, and determines whether to sell Company Stock. When liquidity is increased due to cash inflows, the Bank analyzes expected cash outflows and determines whether Company Stock should be purchased. In making liquidity decisions, the Bank also considers other issues, such as avoiding frequent trades for relatively small amounts of funds and avoiding buys and sells on successive days.

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 7

The Bank has discretion to purchase and sell investments intended to provide sufficient liquidity, including short-term liquid securities, money-market fund shares, short-term investment funds organized as bank-maintained collective funds, and/or cash. The Bank has advised that it expects typically to maintain such liquidity by investing in units of the Bank's own in-house short-term investment fund because the earnings on that fund are attractive in comparison to alternative short-term investments. This in-house investment fund is also a bank-maintained collective investment trust fund.

The Bank has discretion to use alternative sources to enhance liquidity. If the Bank determines that open market or off-market transactions in the Company Stock are not appropriate under the facts and circumstances to meet cash flow requirements, it may choose to enhance liquidity through various approaches. These include, but would not be limited to, obtaining an interest-free loan (not to exceed three days) from one or both of the plan sponsors or a loan from one or more other investment accounts under the 401(k) plans, or a drawdown on a committed or uncommitted line of credit from a third party should one be established.

B. *The Bank makes all discretionary investment decisions regarding all Company Stock in the Company Stock Fund.*

The Bank has the exclusive authority to determine the manner and timing of purchases and sales of Company Stock, including whether to buy or sell in the open market or through off-market transactions. The Bank may use any purchase or sale option it deems appropriate, including:<sup>7</sup>

1. *Open market transactions.* The Bank has authority to consider all available sources for placing trades, including but not limited to the New York Stock Exchange, the "block trading" market, and the Crossing Network (which includes POSIT and Instinet).
2. *Transactions with the Issuer.* The Bank has authority to solicit the interest of the issuer to act as a counterparty to a Company Stock transaction.

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<sup>7</sup> All investment decisions are made consistent with ERISA and, where necessary, under exemptions from applicable ERISA prohibited transaction provisions.

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 8

3. *Plan-to-Plan Transactions.* The Bank has authority to contact appropriate independent discretionary plan fiduciaries to ascertain if another plan (whether affiliated or not with GM or Delphi) is interested in acting as a counterparty.

The Bank has exclusive authority to select the broker/dealer for each trade. Among other things, the Bank has the discretion to negotiate and direct the timing and other terms of any purchase or sale, the means and timing of settlement and the amount of any commissions. The Bank also has discretion to use soft dollar arrangements consistent with applicable regulatory requirements and the Bank's soft dollar policy, although the Bank has advised that it does not currently intend to utilize this authority.

Plan participants with assets in Company Stock Funds will have in effect the same proxy voting rights as other Company Stock holders by reason of their right to direct the Bank to vote their shares. To the extent participants do not exercise voting rights, the Bank has the independent responsibility and authority (subject to rights of certain unions representing hourly employees) to vote such shares. Participants in all cases retain the authority to accept or reject tender offers.

- C. *The Bank has exclusive responsibility to cause each Fund to take action intended to achieve close tracking of the relevant Company Stock.*

As noted above, investment decisions are made by the Bank with the objective of causing each Company Stock Fund to replicate as closely as possible the performance of the Company Stock in that Fund. The Bank conducts its daily liquidity and Company Stock management functions with a view toward diminishing the variations in performance of a Company Stock Fund as compared to the underlying Company Stock. The aggregate daily decisions of plan participants to establish or liquidate interests in each Company Stock Fund, among other things, may cause wide interim variations in the liquidity of a Company Stock Fund. The Bank makes daily investment management decisions regarding liquidity and Company Stock that result in each Company Stock Fund tracking the performance more closely than would otherwise occur in the absence of such professional investment management.

Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 9

#### IV. Requested Interpretation

ICA Section 3(c)(11) and Securities Act Section 3(a)(2),<sup>8</sup> as here relevant, provide exceptions with respect to any collective trust fund maintained by a bank consisting solely of assets of trusts and plans qualified under Internal Revenue Code Section 401. The Staff has interpreted the term "maintained" to mean that the bank must exercise substantial investment responsibility over the trust fund, and may not perform merely custodial or similar functions for the trust fund. *See, e.g., Employee Benefit Plans*, 1933 Act Release No. 6188 (Feb. 19, 1980).

The requirements of Sections 3(c)(11) and 3(a)(2) that collective trust funds be "maintained" by a bank should be interpreted to include management of a collective investment trust which invests in a single stock where, as described above, the bank exercises substantial investment responsibility. We believe that a bank exercises substantial investment responsibility with respect to the management of such a trust if the bank exercises all or substantially all of the investment responsibility required in managing the trust, even though the scope of investment responsibility required is limited. Neither the fact that the extent of investment decisions needed to maintain the Trust X Company Stock Funds is limited to investing in short-term investments and Company Stock and managing the liquidity of the Fund, nor the fact that certain voting and tender offer decisions are retained by plan participants, makes these Funds any less "maintained by a bank" than other analogous bank-maintained funds.

First, managing a Company Stock Fund to track the performance of a class of Company Stock while at the same time dealing with maintaining liquidity is a significant investment management undertaking. Any amount of liquidity which is maintained in the Fund necessarily causes a deviation between the tracked benchmark and the Fund's performance. Inappropriate liquidity management (e.g., deciding to hold too much of the Fund in cash and short-term investments) may result in unacceptably wide variations in tracking results. Close tracking of an underlying stock in a Company Stock Fund that has wide interim variations in liquidity can be achieved only with knowledge and diligent exercise of investment discretion, all of which will be performed by the Bank with respect to each Fund. This strongly evidences a fund "maintained by a bank."

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<sup>8</sup> Interpretive advice is not being sought with respect to the status under Securities Act Section 3(a)(2) of the interests in the plans described in this letter.

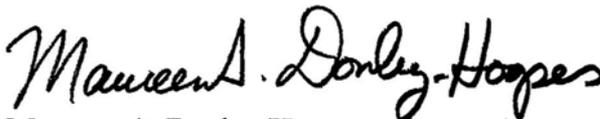
Douglas Scheidt  
Catherine Dixon  
January 28, 2000  
Page 10

Second, the Bank's responsibilities in managing the Trust X Company Stock Funds are analogous to the responsibilities for managing passive index funds which replicate the S&P 500 by proportionately investing in each stock in that index. In this regard, the Staff has implicitly recognized that an index fund is "maintained" by the bank that manages the fund for purposes of ICA Section 3(c)(11) and Securities Act Section 3(a)(2). See Wells Fargo Bank N.A., 1988 WL 234910 (S.E.C.) (Sept. 7, 1988) and Wells Fargo Bank N.A., 1975 WL 11203 (S.E.C.) (Nov. 14, 1975). The analogous responsibilities of the Bank in managing the Trust X Company Stock Funds should be viewed as giving the Bank the "substantial investment responsibility" over Trust X Company Stock Funds necessary to rely on ICA Section 3(c)(11) and Securities Act Section 3(a)(2).

Since the Bank here is the ultimate decision maker on all Company Stock Fund investment decisions as described above, interpreting the ICA Section 3(c)(11) and Securities Act Section 3(a)(2) "maintained by a bank" requirements as being satisfied in the case of such a fund is consistent with both Staff precedent and the public interest.

In light of the foregoing, we respectfully request that the Staff issue an interpretive letter for the benefit of our client and the Bank confirming our interpretation that a collective investment trust with respect to unrelated employers comprised of separate single stock funds that are managed by a bank as described above is "maintained by a bank" for the purposes of ICA Section 3(c)(11) and Securities Act Section 3(a)(2).

Sincerely yours,



Maureen A. Donley-Hoopes

# **Attachment A**

## **Pre - May 28, 1999 Delphi Spinoff**

**GM 401K Plans**  
**Company Stock Investment Options:**

- 1 - GM Classic
- 2 - GMH
- 3 - EDS - Sell orders only
- 4 - Raytheon - Sell orders only

**GM Affiliate (Including Delphi) 401K Plans**  
**Company Stock Investment Options:**

- 1 - GM Classic
- 2 - GMH
- 3 - EDS - Sell orders only
- 4 - Raytheon - Sell orders only

**GM Savings Plan Master Trust**  
**Company Stock Accounts**

- 1 - GM Classic
- 2 - GMH
- 3 - EDS
- 4 - Raytheon

# Attachment B

## After May 28, 1999 Delphi Spinoff

