UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8740 / September 22, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54489 / September 22, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2552 / September 22, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27495 / September 22, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12427

In the Matter of **DUNHAM & ASSOCIATES HOLDINGS, INC., DUNHAM & ASSOCIATES INVESTMENT COUNSEL, INC., DUNHAM TRUST COMPANY, JEFFREY A. DUNHAM, DUNHAM & ASSOCIATES SECURITIES, INC., AND ASSET MANAGERS, INC.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and

Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Dunham & Associates Holdings, Inc., Dunham Trust Company, and Dunham & Associates Securities, Inc.; pursuant to Section 8A of the Securities Act, Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act against Dunham & Associates Investment Counsel, Inc.; pursuant to Section 8A of the Securities Act, Section 15(b)(6) of the Exchange Act, Section 203(f) of the Investment Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act against Jeffrey A. Dunham; and pursuant to Section 8A of the Securities Act against Asset Managers, Inc. (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

A. SUMMARY

This case concerns the Respondents' operation of unregistered investment companies and the public offer and sale of investments in a common trust fund. Under certain conditions, common trust funds are excluded from the definition of "investment company" under the Investment Company Act and exempt from the registration provisions of the Securities Act. Generally, these conditions are designed to ensure that common trust funds are used by a bank, in its fiduciary capacity, solely as an aid to administer its fiduciary clients' accounts and not as a separate investment vehicle.[2] Here, the Respondents used a common trust fund as a separate

[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Generally, a common trust fund is a pool of funds maintained by a bank (which is defined to include a trust company) exclusively for the bank's collective investment of money held by the bank in its fiduciary capacity on behalf its clients. See Investment Company Act, Section 3(c)(3).

investment vehicle for investors, most of whom were non-accredited investors, to invest in unregistered funds operated by the Respondents.[3] These non-accredited investors were entitled to the investor protections provided by the Investment Company Act and Securities Act, and the Respondents should have registered the common trust fund and the offering of the securities issued by it under those Acts and complied with the requirements pertaining to investment companies under the Investment Company Act.

In this case, the Respondents organized and operated thirteen limited partnerships (ten "Stock Funds," the "Government Fund," and two "Mortgage Funds," collectively, the "Funds"). The Respondents marketed and publicly offered and sold interest in the Funds to investors as an alternative to registered mutual funds.

In their attempt to avoid the regulatory and registration requirements of the Investment Company Act and Securities Act, the Respondents offered different vehicles for investing in the Funds. To accredited investors, the Respondents offered and sold direct investments in the Funds. To non-accredited investors, the Respondents offered and sold indirect investments in the Funds by having the investors place their money in The Common Trust Fund ("Common Trust"). The investors then directed the Common Trust's trustee, Dunham Trust Company ("DTC"), how to invest their money in the Funds.

The Respondents did not register the Common Trust, the Stock Funds, or the Government Fund as investment companies under the Investment Company Act. They also did not register their offer and sale of securities in the Common Trust or the Funds under the Securities Act. Rather, the Respondents claimed the Common Trust, the Stock Funds, and the Government Fund were not investment companies under Sections 3(c)(3) (excludes common trust funds that meet certain conditions) and/or 3(c)(1) (excludes issuers that have no more than 100 investors and are not publicly offering stock) of the Investment Company Act. They also claimed that the offer and sale of the securities of the Common Trust and the Funds were exempt from the Securities Act registration provisions under Sections 3(a)(2) (exempts any interest or participation in any common trust fund that is excluded from the definition of "investment company") and 4(2) (exempts non-public offerings by issuers) and Rule 506 under Regulation D (exempts offerings with no more than 35 non-accredited investors).

The Respondents, however, publicly offered and sold interests in the Common Trust, including to non-accredited investors, as a vehicle for investing in the Funds and not as incidental to DTC's trust services; therefore, the Common Trust could not rely on any exclusion from the definition of "investment company" under the Investment Company Act or exemption from the Securities Act registration provisions. Similarly, because the Respondents publicly offered and sold interests in the Funds, the Stock Funds and the Government Fund were not excluded from the definition of "investment company" under the Investment Company Act, and

[3] Under Rule 501(a) of Regulation D, "accredited investor" is defined to include any natural person whose net worth (individually or with spouse) exceeds $1,000,000 or whose income exceeds $200,000 (or $300,000 with spouse) in each of the last two years and reasonably expects to reach the same income level in the current year.

the public offer and sale of interests in the Funds was not exempt from the Securities Act registration provisions.

B. RESPONDENTS

1. The Dunham Entities and Jeffrey A. Dunham

a. Dunham & Associates Holdings, Inc. ("Dunham Holdings") is a California corporation and has its principal place of business in San Diego, California.

b. Dunham & Associates Investment Counsel, Inc. ("DAIC") is a California corporation and has its principal place of business in San Diego, California. DAIC is dually-registered with the Commission as an investment adviser and a broker-dealer. DAIC is the investment adviser for Dunham Trust Company and for the Funds. DAIC is a wholly-owned subsidiary of Dunham Holdings.

c. Dunham Trust Company ("DTC") was organized as a Nevada corporation and was licensed to engage in trust activities as a trust company by the state of Nevada in August 1999. It has its principal place of business in Reno, Nevada, and is regulated by the Nevada Department of Business and Industry, Financial Institutions Division. In August 1999, the same month that DTC was organized and licensed to engage in trust activities, DTC became the successor trustee of The Common Trust Fund. Dunham Holdings owns 99.5% of DTC's stock, with the remaining 0.5% owned by DTC directors, as required by Nevada banking law.

d. Jeffrey A. Dunham ("Dunham") is a resident of Del Mar, California. Dunham is the chairman, CEO and/or president of Dunham Holdings, DAIC, DTC, Dunham & Associates Securities, Inc., and Asset Managers, Inc., and directly or indirectly owns almost all of the stock of these Respondents. Dunham holds NASD Series 3, 4, 7, 24, 53, and 63 securities licenses.

2. The General Partners of the Funds

a. Dunham & Associates Securities, Inc. ("Dunham Securities") is a California corporation and has its principal place of business in San Diego, California. Dunham Securities is the general partner of eleven of the thirteen Funds (the ten Stock Funds and the Government Fund). Dunham Securities is a wholly owned subsidiary of Dunham Holdings.

b. Asset Managers, Inc. ("Asset Managers") is a California corporation and has its principal place of business in San Diego, California. Asset Managers is the general partner of the two Mortgage Funds. Asset Managers is a wholly owned subsidiary of Dunham Holdings.

C. RELATED ENTITIES

1. **The Funds** (ten "Stock Funds," the "Government Fund," and two "Mortgage Funds," collectively, the "Funds") are thirteen California limited partnerships organized by DAIC between 1997 and 2002, with their principal place of business in San Diego, California. Each fund is engaged in an ongoing offering, with a total sales cap of $100 million, and each fund has a specific investment objective. The Funds are not registered as investment companies, and the offer and sale of interests in the Funds are not registered with the Commission.

2. **The Common Trust Fund** ("Common Trust"), formed in 1998, is a trust operated by DTC exclusively for the collective investment and reinvestment of monies received and held by DTC, as trustee, on behalf of its customers. DTC invests most of the monies received from customers in Common Trust sub-funds, which in turn and at the direction of the DTC Common Trust customers, invest the money in one or more of the Funds. The sub-funds' investment objectives and policies are actively implemented and supervised by DAIC, subject to oversight by DTC's Trust Investment Committee. The Common Trust is not registered as an investment company, and the offer and sale of investment units in the Common Trust are not registered with the Commission.

D. FACTS

1. The Respondents' Offer and Sale of Interests in the Funds and Common Trust

Beginning in 1997, DAIC organized the Funds. The Respondents incorrectly stated in the offering documents that the Stock Funds and Government Fund did not need to be registered with the Commission under the Investment Company Act because these funds were excluded from the definition of "investment company." Specifically, the Respondents claimed that these funds met the exclusion from the definition of "investment company" because each fund had no more than 100 beneficial owners and had not made a public offering of its securities in reliance on Regulation D under the Securities Act.[4] See Section 3(c)(1) of the Investment Company Act. The Respondents also incorrectly stated in the offering documents that the offer and sale of the Funds' securities were exempt from registration under Section 4(2) of the Securities Act and Rule 506 of Regulation D. Section 4(2) of the Securities Act provides an exemption from registration for non-public offerings, and Rule 506 of Regulation D provides a safe harbor from registration for offerings of no more than 35 non-accredited investors.

[4] Under Regulation D under the Securities Act, an issuer with no more than 35 investors who are not "accredited investors," as defined in Rule 501(a) of Regulation D, will not be deemed to be making a public offering for purposes of Section 4(2) of the Securities Act, provided that the issuer complies with the other applicable requirements of Regulation D.

In 1998, Dunham formed the Common Trust and contracted with a third-party bank to be the trustee of the Common Trust. In 1999, the bank informed Dunham that it would cease to be the trustee of the Common Trust. As a result, Dunham organized DTC, and in August 1999, DTC became the successor trustee of the Common Trust.[5] DTC then took custody and control of the Common Trust and contracted with DAIC as the Common Trust's principal investment adviser. From August 1999 to November 2004, the Respondents marketed and publicly offered and sold indirect investments in the Funds through the Common Trust.[6]

DAIC and DTC entered into selling and referral agreements with third-party broker-dealers and investment advisers to solicit investors in the Funds and the Common Trust. DAIC also employed several individuals who solicited investors directly. The third-party solicitors were compensated only when they brought new investors into the Funds, whether directly invested or through the Common Trust. They were not compensated for referring customers to the other trust services of DTC. DAIC's employees conducted training and due diligence seminars for the third-party solicitors and also supplied them with marketing materials.

The Respondents and their third-party solicitors referred investors who did not qualify for direct investment (i.e., non-accredited investors) in the Funds to DTC, where they entered into a trust agreement with DTC and then invested in the Common Trust. The Common Trust, in turn, invested exclusively in the Funds. Investors could allocate their Common Trust investments among thirteen pooled investment sub-funds, which corresponded with the respective Funds, or to one or more strategic allocation portfolios. The investment decisions typically were made by the investor in consultation with the third-party broker-dealer or investment adviser who referred the customer to DTC.

Interests in the Common Trust were marketed and publicly offered and sold to taxable and tax-deferred accounts of individual investors and business entities. The assets of the Common Trust included assets from individual retirement accounts ("IRAs") and revocable and irrevocable trusts. As of December 31, 2003,[7] approximately 1,690 customer accounts had invested $353.3 million in the Common Trust, including 748 IRAs with $128.7 million invested.[8] The Common Trust, which invested exclusively in the Funds, held more than a 10% interest in each of the Stock Funds. As a result, by operation of the Investment Company Act Section 3(c)(1)(A) "look-through" provision discussed below, each of the Stock Funds had more

[5] In structuring DTC, the Common Trust, and the Funds, Dunham consulted with counsel.

[6] The non-accredited investors who made these indirect investments were not furnished with the Funds' audited financial statements as required by Regulation D, discussed below.

[7] The last audits of DTC and the Common Trust prior to trust assets being transferred to the Registered Funds was December 31, 2003. See Section III.D.3. below.

[8] As discussed in Section III.E.1.a. below, the investment of IRAs in the Common Trust shows that the Common Trust was an investment vehicle because IRAs are accounts established primarily for money management.

than 100 investors.[9] A majority of the Common Trust investors were not accredited investors. Thus, the Respondents incorrectly stated in offering documents that the Common Trust was not an investment company, and improperly structured the Common Trust to take advantage of the exclusion from the definition of "investment company" under Section 3(c)(3) of the Investment Company Act and the exemption from the securities registration provisions under Section 3(a)(2) of the Securities Act.

2. DTC's Services

DTC was formed in 1999. Prior to becoming the successor trustee of the Common Trust in August 1999, DTC did not manage fiduciary assets or a common trust fund. After August 1999, DTC provided trust services for only a small number of accounts.[10] As of December 31, 2003, DTC had taken in assets from 1,975 customer accounts. Only a small percentage of these customer accounts received trust services traditionally provided by trust companies, and of this group, only 34 customer accounts represented irrevocable trusts; the remainder of these accounts were revocable trusts or customer accounts for which DTC acted as custodian.[11] Between 2000 and 2003, DTC's compensation for traditional trust services never exceeded 20% of DTC's annual revenue. Prior to December 2004, Respondents' marketing materials made only passing reference to these trust services. DTC's limited trust services demonstrate that the Common Trust was an investment vehicle, and not an aid to administer fiduciary accounts.

For 1,690 customer accounts, DTC publicly marketed the Common Trust as a vehicle for investors to invest in the Funds. DTC's trust officer was not involved in these investors' initial investment decisions; rather, the investors themselves chose how to invest in the Funds offered through the Common Trust. The Common Trust only offered investment options in the Funds. DTC merely reviewed new accounts and conducted annual reviews of prior accounts to determine whether investment objectives were satisfied and to determine whether the account was properly administered. DTC charged the Common Trust a trustee fee; from 2000 to 2003, DTC generated 60% to 70% of its annual revenue from these fees. DTC's failure to exercise substantial investment responsibility again demonstrates that the Common Trust was an investment vehicle, and not an aid to administer fiduciary accounts.

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[9] As discussed in Section III.E.1.b. below, under the "look through" provisions of Section 3(c)(1)(A) of the Investment Company Act, the Stock Funds' number of shareholders includes the shareholders of an investment company holding more than 10% of its stock, i.e., the Common Trust. Thus, the Stock Funds, with over 100 investors each, do not qualify for the Investment Company Act Section 3(c)(1) exclusion from the definition of "investment company."

[10] As discussed in Section III.E.1.a. below, where trust services are incidental to money management, a common trust fund is an investment vehicle and not an aid to administer fiduciary accounts, and therefore does not fall within the relevant exclusion from the definition of "investment company."

[11] As discussed in Section III.E.1.a. below, like IRAs, revocable trusts are generally not established for a fiduciary purpose.

3. Certain Remedial Efforts

Prior to this proceeding, Respondents commenced registration of eleven stock and bond mutual funds ("Registered Funds") in July 2004. The Registered Funds' registration statement went effective on November 1, 2004. In October 2004, Respondents gave Common Trust investors the option to: (1) transfer Common Trust assets into the corresponding Registered Funds in a tax-free transaction; (2) terminate a revocable trust with no penalty; or (3) remain invested in the Funds through the Common Trust, but only if the investors were trust customers of DTC and their indirect investments in the Funds were incidental to the trust services that DTC provided to them. In addition, investors who were accredited still had the option of investing directly in the Funds.

E. LEGAL DISCUSSION

1. The Common Trust and the Stock Funds and Government Fund Are Investment Companies

Section 3(a)(1)(A) of the Investment Company Act defines "investment company" to include any issuer that is or holds itself out as being engaged primarily in the business of investing, reinvesting, or trading in securities. The Common Trust was an investment company because it was and held itself out as an issuer engaged primarily in the business of investing in the Funds' units, which are securities. Similarly, the Stock Funds and the Government Fund were investment companies because they were and held themselves out as issuers engaged primarily in the business of investing in securities.

An entity that meets the definition of "investment company" under Section 3(a)(1) of the Investment Company Act nevertheless is not an investment company if it meets a statutory exclusion from that definition under Section 3(c) of the Investment Company Act. The Common Trust was an investment company because it could not rely on any such exclusion, including Section 3(c)(3) of the Investment Company Act. The Stock Funds and Government Fund were investment companies because they could not rely on any such exclusion, including Section 3(c)(1) of the Investment Company Act.[12]

a. The Common Trust and Section 3(c)(3)

The Common Trust was established in an attempt to take advantage of the exclusion from the definition of "investment company" provided under Section 3(c)(3) of the Investment Company Act. Section 3(c)(3) generally provides that a common trust fund is not an investment company if it is maintained by a bank exclusively for the collective investment and reinvestment

[12] The Mortgage Funds claim reliance on the Section 3(c)(5)(C) exclusion from the definition of "investment company" and are not parties to this proceeding. Section 3(c)(5)(C) of the Investment Company Act excludes from the definition of "investment company" any person primarily engaged in the business of purchasing or acquiring mortgages and other liens on and interests in real estate.

of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if (1) the fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose; (2) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not (i) advertised; or (ii) offered for sale to the general public; and (3) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable federal or state law.[13]

The Common Trust, however, did not satisfy the requirements of the Section 3(c)(3) exclusion. First, DTC did not "maintain" the Common Trust as required by Section 3(c)(3) of the Investment Company Act. The "maintained" provision requires that a bank[14] have and exercise "substantial investment responsibility" with respect to a common trust fund. See, e.g., Employee Benefit Plans, Securities Act Release No. 6188, nn.139-141 & accompanying text (Feb. 1, 1980). DTC exercised no investment responsibility over the Common Trust. Instead, the Common Trust investors directed DTC to invest in the Funds that the Respondents offered through the Common Trust. At most, DTC conducted an initial and an annual review of the Common Trust investor accounts.

Second, DTC did not employ the Common Trust "solely as an aid" to the "administration of . . . accounts . . . maintained for a fiduciary purpose" as required by Section 3(c)(3) of the Investment Company Act. In this regard, the common trust fund exception is unavailable to common trust funds holding IRA assets, because such assets are not held for a fiduciary purpose. See Proposed Rule: Certain Thrift Institutions Deemed Not To Be Investment Advisers, Exchange Act Release No. 49639, n.56 & accompanying text (Apr. 30, 2004) (IRAs are "[a]ccounts established primarily for money management" and not for a "fiduciary reason"); see also Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291, n.85 (May 11, 2001); In the Matter of Commercial Bank and Marvin C. Abeene, Investment Company Act Release No. 20757 (Dec. 6, 1994). Similarly, revocable trusts are also generally not established for a fiduciary purpose. See Release No. 49639 at n.56 & accompanying text. Here, DTC used the Common Trust as a vehicle for non-accredited investors to invest in the Funds, and any fiduciary service to customer accounts was incidental to that investment. For the vast majority of its accounts, DTC's only service was to conduct initial and annual reviews of the accounts' investments in the Funds. Moreover, over 36% of the assets invested in the Common Trust were IRA assets.

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[13] Except for the first requirement that a common trust fund be maintained by a bank, the requirements in Section 3(c)(3) of the Investment Company Act were added by the Gramm-Leach-Bliley Act of 1999, which codified the Commission's longstanding interpretation that the exclusion for common trust funds requires that the common trust fund must itself have a bona fide fiduciary purpose and not primarily serve as an investment vehicle. Proposed Rule: Certain Thrift Institutions Deemed Not To Be Investment Advisers, Exchange Act Release No. 49639, n.16 (Apr. 30, 2004).

[14] Section 2(a)(5) of the Investment Company Act defines "bank" to include, among other things, a trust company under certain conditions.

Third, the Respondents, not in connection with offering DTC's fiduciary services, marketed and sold the interests in the Common Trust to investors nationwide through a network of independent broker-dealers and investment advisers. Such marketing and sales efforts to the general public are not consistent with the exclusion from the definition of "investment company" in Section 3(c)(3) of the Investment Company Act. The Respondents offered and sold interests in the Common Trust to thousands of investors, many of whom were not accredited investors. Moreover, the Respondents' offering of the Common Trust was not in connection with the ordinary advertising of DTC's fiduciary services; rather, the Respondents offered and sold interests in the Common Trust as an alternative to registered mutual funds, and the Common Trust's offering documents and marketing materials made only a general reference to DTC's fiduciary services not associated with investment in the Common Trust.

b. The Stock Funds and Government Fund and Section 3(c)(1)

The Respondents claimed in offering documents that the Stock Funds and Government Fund were not investment companies based on the exclusion from the definition of "investment company" provided by Section 3(c)(1) of the Investment Company Act. Section 3(c)(1) generally provides that an issuer will not be an investment company if it has no more than 100 investors and is not making, or presently proposing to make, a public offering of its securities.

Nonpublic offerings may be made pursuant to Section 4(2) of the Securities Act or the safe harbor provided by Regulation D under that Act. Under Regulation D, an issuer seeking to rely on the safe harbor is limited to no more than 35 investors who are not "accredited investors," as defined in Rule 501(a) of that regulation.

The Stock Funds and the Government Fund did not qualify for the exclusion provided by Section 3(c)(1) of the Investment Company Act because their securities were publicly offered. The Respondents marketed and publicly offered and sold these securities through a network of independent broker-dealers and investment advisers and DAIC's internal marketing staff. Non-accredited investors were referred to DTC, where they invested in the Funds through the Common Trust.

In addition, the Stock Funds did not qualify for the exclusion because, as a result of the "look-through" provision of Section 3(c)(1)(A), each Stock Fund had more than 100 investors, including each of the investors in the Common Trust. Section 3(c)(1)(A) of the Investment Company Act provides that beneficial ownership of interests in a Section 3(c)(1) entity by a company is generally deemed to be ownership by one person. Section 3(c)(1)(A) also provides, however, that if a company owns 10% or more of the Section 3(c)(1) entity's outstanding voting securities, and the company is an investment company, then each of the beneficial owners in that company is counted in determining the number of shareholders in the Section 3(c)(1) entity.

The Common Trust owned more than 10% of each Stock Fund's outstanding voting securities from approximately 1999 to November 2004, and the Common Trust was itself an investment company. Thus, under Section 3(c)(1), each beneficial owner of the Common Trust is counted as a beneficial owner of each of the Stock Funds. Accordingly, because there were

over 100 beneficial owners in the Common Trust, each Stock Fund had more than 100 investors and thus was an investment company because it could not rely on Section 3(c)(1) of the Investment Company Act.

2. Violations of Section 7(a) of the Investment Company Act: Unregistered Investment Companies

Section 7(a) of the Investment Company Act prohibits an investment company not registered with Commission from engaging in any business in interstate commerce, including offering, selling, purchasing, or redeeming interests in the investment company. The Common Trust and the Stock Funds and Government Fund have never registered with the Commission as investment companies and have engaged in interstate commerce. From August 1999 to November 2004, the Common Trust and the Stock Funds and Government Fund did not meet any statutory exclusion from the definition of "investment company"; thus, they violated Section 7(a) of the Investment Company Act because they operated as unregistered investment companies.

As a result of the conduct described above, DAIC (as the investment adviser to DTC and the Common Trust, the Stock Funds, and the Government Fund) and Dunham (as the principal of DAIC and DTC) willfully[15] aided and abetted and were a cause of the Common Trust and the Stock Funds and Government Fund's violations of Section 7(a) of the Investment Company Act. Dunham Holdings (as DAIC and DTC's controlling shareholder), DTC (as trustee of the Common Trust), and Dunham Securities (as the general partner of the Stock Funds and Government Fund) were also a cause of violations of Section 7(a) of the Investment Company Act. The Respondent entities were part of an organizational structure designed to facilitate indirect investment by non-accredited investors in the Funds and, thereby, avoid Investment Company Act registration.

3. Violations of Sections 5(a) and 5(c) of the Securities Act: Unregistered Offer and Sale of Securities

Sections 5(a) and 5(c) of the Securities Act prohibit the unregistered offer or sale of securities in interstate commerce, unless an exemption from registration applies. Anderson v. Aurotek, 774 F.2d 927, 929 (9th Cir. 1985); SEC v. Murphy, 626 F.2d 633, 640 (9th Cir. 1980). Here, all the elements of a Section 5 violation are present. First, the investment interests in the Common Trust and the Funds that were offered and sold constitute "securities" as defined under Section 2(a)(1) of the Securities Act. Second, these securities were offered and sold to investors through means of interstate commerce, by use of the mails and telephones. Third, the offers or sales were not registered. Moreover, for the Common Trust, from August 1999 to November 2004, and for the Funds, commencing in 1997 to November 2004, no exemptions from registration applied.

[15] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. Cf. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8, (2d Cir. 1965).

a. The Common Trust

Because the Common Trust was an investment company, its securities did not qualify for the exemption under Section 3(a)(2) of the Securities Act for any common trust fund that is excluded from the definition of "investment company."

b. The Funds

The Respondents' offer and sale of the Funds' securities did not qualify for the exemption from registration under Section 4(2) of the Securities Act for non-public offerings or the safe harbor from registration provided by Rule 506 of Regulation D for offerings with no more than 35 non-accredited investors. The Respondents' conduct in marketing the Funds resulted in those securities being publicly offered and sold nationwide by a network of independent broker-dealers and investment advisers. The Respondents also offered and sold the Funds' securities through the Common Trust to thousands of investors, many of whom were not accredited investors. See Regulation D, Rules 501(e)(2) and 506(b) (if entity investing in issuer was organized for purpose of acquiring securities and each owner of entity was not accredited investor, then each beneficial owner of entity is deemed as a separate investor). In addition, the non-accredited investors investing through the Common Trust did not receive the Funds' audited financial information, as required under Regulation D, Rules 502(b)(1) and 506(b)(1).

c. The Respondents' Liability for the Unregistered Offer and Sale of Securities

The Respondents directly or indirectly participated in offering and selling the Common Trust's and Funds' securities. DAIC and Dunham therefore willfully violated Sections 5(a) and 5(c) of the Securities Act. Dunham Holdings, DTC, Dunham Securities, and Asset Managers violated Sections 5(a) and 5(c) of the Securities Act.

F. RESPONDENTS' REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondents.

G. UNDERTAKINGS

Respondent DAIC has undertaken to:

1. Within 60 days of the date of this Order, DAIC shall retain, at its expense, an Independent Consultant, not unacceptable to the Commission's staff. DAIC shall require the Independent Consultant to: (a) conduct a comprehensive review of the policies and procedures of DAIC, and those of its affiliates, as relevant, with respect to compliance with the Investment Company Act and the Securities Act, including, but not limited to, the operation and marketing practices, to the extent applicable, of DTC, the Common Trust, and the Funds; (b) recommend policies and procedures designed reasonably to prevent and detect violations of the federal

securities laws, including, but not limited to, the violations found in this Order; and (c) prepare a written report to DAIC's board of directors of its findings and recommendations. Such recommended policies and procedures shall include, but not be limited to, training programs, manuals, and other measures reasonably designed to ensure that DAIC employees, officers and agents understand and are capable of performing their obligations and responsibilities with respect to investment company operations consistent with the requirements of the federal securities laws;

2. DAIC shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for the review;

3. At the end of the review, which in no event shall be more than 150 days after the date of this Order, DAIC shall require the Independent Consultant to submit to DAIC and to Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office in Los Angeles an Independent Consultant's Report. The Independent Consultant's Report shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the policies and procedures adequate and address the deficiencies identified in Section III of the Order;

4. Within 180 days of the date of this Order, DAIC shall in writing advise the Independent Consultant and Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office in Los Angeles of the recommendations that it has determined to accept and the recommendations that it considers to be unduly burdensome. With respect to any recommendations that DAIC deems unduly burdensome, DAIC may propose an alternative procedure designed to achieve the same objective or purpose. DAIC shall attempt in good faith to reach agreement with the Independent Consultant within 210 days of the date of this Order with respect to any recommendation that DAIC deems unduly burdensome. If the Independent Consultant and DAIC are unable to agree on an alternative procedure, DAIC shall abide by the recommendation of the Independent Consultant;

5. Within 240 days of the date of this Order, DAIC shall, in writing, advise the Independent Consultant and Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office of the recommendations it is adopting;

6. DAIC shall take all necessary and appropriate steps to adopt and implement the recommendations contained in the Independent Consultant's Report;

7. No later than one year after the date of this Order, DAIC shall submit to Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office in Los Angeles an affidavit setting forth the details of its efforts to implement the Independent Consultant's recommendations as set forth in the Independent Consultant's Report and its compliance with them;

8. For a period of two years from the date DAIC, in writing, advises the Independent Consultant and Briane Nelson Mitchell or another designated representative of the Commission's

Pacific Regional Office in Los Angeles of the recommendations it is adopting, as described in paragraph III.G.5 of the Order, DAIC shall require the Independent Consultant to monitor DAIC's compliance, and those of its affiliates, as relevant, with the Investment Company Act and the Securities Act, including, but not limited to, the operation and marketing practices, to the extent applicable, of DTC, the Common Trust, and the Funds, and to make recommendations designed to correct any noncompliance. DAIC shall require the Independent Consultant to report the results of each annual review to Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office in Los Angeles;

9. For good cause shown and upon timely application by the Independent Consultant or DAIC, the Commission's staff may extend any of the deadlines set forth in these undertakings;

10. DAIC shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with DAIC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of an authorized representative of the Commission's Pacific Regional Office in Los Angeles, enter into any employment, consultant, attorney-client, auditing or other professional relationship with DAIC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement;

11. DAIC: (a) shall not have the authority to terminate the engagement of the Independent Consultant without the prior written approval of Briane Nelson Mitchell or another designated representative of the Commission's Pacific Regional Office in Los Angeles; (b) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (c) shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission; and

12. DAIC shall authorize the Independent Consultant to promptly report to the Commission's staff any failure by DAIC to comply with this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, Sections 203(e) and 203(f) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Dunham Holdings, DAIC, DTC, and Dunham Securities cease and desist from committing or causing any violations and any future violations of Section 7(a) of the Investment Company Act;

B. Respondent Dunham cease and desist from causing any violations and any future violations of Section 7(a) of the Investment Company Act;

C. All Respondents cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act;

D. Respondents Dunham and DAIC be, and hereby are, censured;

E. It is further ordered that Respondent DAIC shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $150,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies DAIC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Briane Nelson Mitchell, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Los Angeles, CA 90036;

F. It is further ordered that Respondent Dunham shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Dunham as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Briane Nelson Mitchell, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Los Angeles, CA 90036; and

G. Respondent DAIC shall comply with the undertakings enumerated in Section III.G. above.

By the Commission.

Nancy M. Morris
Secretary