

Investment Advisers Act of 1940 – Rule 204A-1
Investment Company Act of 1940 – Rule 17j-1

M&G Investment Management Ltd.

March 1, 2007

Our Ref. No.:
200511211439
M&G Investment
Management Ltd.
File No. 801-21981

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

In your letter dated February 26, 2007,¹ you request our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (“Commission”) under section 204A of the Investment Advisers Act of 1940 (the “Advisers Act”), or rule 204A-1 thereunder, against M&G Investment Management Ltd. (“M&G”) if M&G’s code of ethics does not include the Securities (defined below) as reportable securities with respect to certain of its access persons’ transactions and holdings in the Securities. You also request our assurance that we would not recommend enforcement action to the Commission under section 204 of the Advisers Act, or rule 204-2(a)(13) thereunder, against M&G if it does not make and keep records related to certain of its access persons’ transactions and holdings in the Securities.

I. FACTS

A. M&G

You state that M&G is a U.K.-based investment adviser that is registered with the Commission, and is authorized and regulated by the U.K. Financial Services Authority (“FSA”). You state that M&G has a single U.S. client, an investment company registered under the Investment Company Act of 1940 (the “Company Act”), for which M&G acts as one of several sub-advisers (the “Fund”). You state that M&G maintains its principal place of business in London, England. You state that M&G has deemed all of the employees at its London office to be access persons, pursuant to the code of ethics it adopted in accordance with rule 204A-1(e)(1) under the Advisers Act.

B. Proposed Investments by M&G’s Access Persons

¹ As supplemented by a telephone conversation between Eric S. Purple of the staff and Karen L. Anderberg of Dechert, LLP, counsel to M&G Investment Management Ltd., on March 1, 2007 (“March 1 Telephone Call”).

You state that M&G anticipates that its access persons will engage in a number of personal securities transactions, including transactions in: (i) certain securities issued by National Savings and Investments (“NS&I”); (ii) interests in unit trusts (“AUTs”) and open-ended investment companies (“OEICs”) that are authorized by the FSA for sale in the United Kingdom; and (iii) interests in unit-linked life and pension products sold in the United Kingdom (“Unit-linked Products”). We refer to the securities issued by the AUTs and the OEICs, the Unit-Linked Products, and the securities issued by NS&I collectively as the “Securities.”

You state that M&G proposes to amend its code of ethics so as to allow certain of its access persons to omit the Securities from the holdings and transaction reports required by M&G’s code of ethics. You state that M&G’s amended code of ethics would, however, continue to require access persons who may direct, or influence the decision to direct, the execution of portfolio transactions of M&G’s U.S. client to brokers-dealers and other market intermediaries to include the securities of AUTs and OEICs in their transaction and holdings reports (“Execution-Related Access Persons.”) You acknowledge that M&G’s amended code of ethics would conflict with the requirements of rule 204A-1 under the Advisers Act, and you request no-action assurances.

You state that the Securities have the following attributes:

i. Securities Issued by NS&I

You state that NS&I, which is an executive agency of the Chancellor of the Exchequer of the United Kingdom, issues debt securities directly to the public, as discussed more fully in your letter (specifically Premium Bonds, Savings Certificates, and Bonds, as defined in your letter). You state that these securities are either non-transferable, or have limited transferability, and are usually held to maturity or redeemed directly with NS&I. As a result, there is no secondary market for them. You note that each of the securities is guaranteed 100% by the U.K. Treasury, and that the sovereign debt of the United Kingdom enjoys a credit rating similar to that of the United States.

ii. AUTs and OEICs

You represent that AUTs and OEICs are pooled investment vehicles that issue redeemable securities. You state that AUTs and OEICs are designed as vehicles for investment by the retail public and are stringently regulated in the United Kingdom to assure fair, accurate pricing and equitable, transparent redemption practices. You represent that most AUTs and OEICs calculate net asset values on a daily basis, and you represent that the AUTs and OEICs most commonly effect

sales and redemptions on a forward pricing basis.² You represent that both types of entities are subject to valuation requirements that assure close correlation between share prices and the per share values of their portfolio assets. In particular, you represent that securities holders in AUTs and OEICs are entitled under U.K. law to have their securities redeemed at a price not significantly different from their per share net asset values. You state that AUTs and OEICs value portfolio assets at current market prices, if those prices are readily available, otherwise they value their portfolio assets at fair value determined in good faith by the AUT's or OEIC's managers or trustees. You represent that generally there is no formal or established secondary market for securities issued by AUTs and OEICs.³

You state that the securities of AUTs and OEICs are required to be sold at a uniform net asset value,⁴ but that in many instances the distributors of AUTs or OEICs can vary the sales load charged on sales of AUTs or OEICs, investor by investor. You represent that M&G does not serve as an investment adviser for any of the AUTs or OEICs that are the subject of this letter, and that no investment

² You have not asked for our views regarding AUTs and OEICs that do not calculate net asset values on a daily basis.

You state that pursuant to U.K. law, some AUTs or OEICs engage in backward pricing. You state that U.K. law provides that any investor in such an AUT or OEIC may demand, and is required to receive, forward pricing. You represent that M&G's code of ethics will require all of its access persons to demand forward pricing in such AUTs or OEICs, otherwise M&G's code of ethics will treat those securities as reportable securities.

³ You state that a possibility exists that a secondary market may develop for AUTs and OEICs. You represent that M&G's code of ethics will require all of its access persons to purchase and redeem such securities directly from the issuer, otherwise M&G's code of ethics will treat such securities as reportable securities. March 1 Telephone Call.

⁴ You state that although most AUTs and OEICs are sold and redeemed at a single price, some are dually priced, *i.e.*, their shares are sold at a price that reflects the approximate cost of acquiring the portfolio securities underlying a new investment in the AUT or OEIC, and are redeemed at a different price that reflects the approximate cost of selling underlying portfolio securities in an amount necessary to cover the amounts redeemed. You represent, however, that each price is uniform as to all similarly situated purchasers or sellers, respectively. March 1 Telephone Call.

adviser or principal underwriter of such an AUT or an OEIC controls M&G, is controlled by M&G, or is under common control with M&G.⁵

iii. Unit-linked Life and Pension Products

You represent that Unit-linked Products are insurance contracts that are issued by insurance companies that are authorized to do business in the United Kingdom. The benefits from the insurance contracts are linked to the return of underlying groups of securities, and the values of the insurance contracts fluctuate with the prices of those securities. You state that the Unit-linked Products may be considered to be securities under U.S. law.

You state that Unit-linked Products work as follows. A potential insured person receives a “proposal of insurance” that lists a variety of investment options from which he or she can select, and which are based upon interests in AUTs and/or OEICs.⁶ You state that when the insurer issues the policy, the policy’s ultimate value is linked to the performance of a fixed number of units in the pool of AUTs and/or OEICs that is selected by the insured. You state that the insurer maintains the assets underlying the units in its name, and that the insured has no legal claim on those assets, but only a claim on the contract value of the units themselves. You state that the insured normally has the ability to change the selection of the assets in the pool underlying the insurance policy subsequent to its issuance.

⁵ You state that consequently none of the AUTs or OEICs that is the subject of this letter is a reportable fund as defined in rule 204A-1(e)(9) under the Advisers Act.

You represent, however, that M&G may serve as an investment adviser to AUTs or OEICs, and that the investment adviser or principal underwriter of an AUT or an OEIC may control M&G, or may be controlled by or under common control with M&G. You represent that M&G will continue to treat any such AUT or OEIC as a reportable fund, as defined in rule 204A-1(e)(9) under the Advisers Act, and would continue to require its access persons to report their transactions and holdings in the securities of such issuers. In addition, you represent that M&G will continue to treat Unit-linked Products, as described below, as reportable securities under its code of ethics if the value of those Unit-linked Products is linked to one or more AUTs or OEICs that are reportable funds.

⁶ You state that the value of some Unit-linked Products may be linked to an underlying pool of assets comprised of units of other Unit-linked Products that in turn are linked to interests in the types of AUTs and OEICs that are described above.

You state that the units underlying the Unit-linked Products are redeemable in cash at each unit's per unit net asset value.⁷ You represent that the insurers that issue Unit-linked Products effect sales and redemptions of units, or exchanges between units, on a forward pricing basis.⁸ You state that the value of the units is determined with reference to the public offering price of the underlying units of the AUTs and OEICs. You state that the most insurers price the units of the Unit-linked Products at net asset value on a daily basis, although some are priced on a weekly basis.⁹ You represent further that there is no secondary market for units of the Unit-linked Products, although the insurer will often purchase units for resale to new insureds, rather than redeem the units.¹⁰ You also represent that the insurer sells the units of Unit-linked Products at a uniform price.¹¹

II. ANALYSIS

Section 204A of the Advisers Act together with rule 204A-1 thereunder require any registered investment adviser to establish, maintain and enforce a written code

⁷ You represent that the surrender rights of Unit-linked Products are subject to various restrictions related to the tax-deferred nature of the products.

⁸ But see *supra* note 2 (noting that some AUTs or OEICs may engage in backward pricing). You state that M&G's code of ethics will require all access persons who purchase Unit-linked Products either to: (a) confirm that the terms of their policy requires the issuing insurance company to demand forward pricing of the securities of the AUTs and OEICs that underlie their Unit-linked Products; or (b) obtain written assurances from the insurer or its agents that the insurer demands forward pricing of those Securities. You represent that the code of ethics will continue to treat Unit-linked Products as reportable securities with respect to any access person who cannot comply with one of those undertakings.

⁹ You note that Unit-linked Products with weekly valuations only accept purchase or redemption orders on the same day that their net asset values are calculated.

¹⁰ You state that the insurer does not typically sell the underlying assets in termination of the units, but will usually hold the units in inventory until they can be sold to another insured.

¹¹ In addition, you represent that an access person who is an insured would not have the ability to determine whether an insurer purchased or sold shares of an AUT or OEIC from the issuer itself or in any secondary market, and consequently could not obtain any benefit from a distributor of the underlying AUT or OEIC securities in connection with any variance in the sales load charged by an underlying AUT or OEIC. See *infra* text accompanying note 20.

of ethics that, among other things, requires the reporting of securities transactions by the investment adviser's access persons. Specifically, rule 204A-1(b) provides, as pertinent here, that the code of ethics must require that access persons submit to the investment adviser's chief compliance officer, or another person who is designated in the code of ethics, reports of the access persons' transactions in and holdings of "reportable securities," as defined in rule 204A-1(e)(10).¹² The reporting requirements that rule 204A-1 imposes aid investment advisers and the Commission's examination staff in identifying conflict of interest situations involving access persons' personal securities transactions that could harm the interests of advisory clients.¹³

Those conflict of interest situations involve instances in which an access person's personal securities transactions benefit from a client's securities transactions, often to the client's detriment.¹⁴ The reporting requirements of rule 204A-1 exclude

¹² Rule 204A-1(e)(10) defines reportable securities broadly to include all securities as defined in section 202(a)(18) of the Advisers Act, with several exceptions, including as relevant here, Government securities, shares of open-end funds that are not reportable funds, and shares of UITs that invest exclusively in open-end funds that are not reportable funds. Rule 204A-1(e)(1) defines access person to include any supervised person of an investment adviser who has access to non-public information regarding a client's securities transactions or holdings, or who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

¹³ See *Investment Adviser Codes of Ethics*, SEC Rel. No. IA-2209, n.28 (Jan. 20, 2004) ("[o]ur proposal to have codes of ethics require initial and annual holdings reports would facilitate an adviser's assessment of whether an individual's personal securities holdings present a conflict of interest"); *Investment Adviser Codes of Ethics*, SEC Rel. No. IA-2256 (July 2, 2004) ("Adopting Release") ("[r]eviewing these reports will allow advisers as well as the Commission's examination staff to identify improper trades or patterns of trading by access persons").

¹⁴ Rule 204A-1 was modeled on rule 17j-1 under the Company Act. See Adopting Release. In amending rule 17j-1 under the Company Act, the Commission indicated that rule 17j-1 addresses conflict of interest situations whereby "fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors." See *Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and their Investment Advisers and Principal Underwriters*, SEC Rel. No. IC-21341 (Sept. 8, 1995).

certain securities whose nature prevents an access person from benefiting from client transactions in those same securities.¹⁵

M&G acknowledges that the Securities are reportable securities such that M&G's access persons must report their transactions in and holdings of the Securities in accordance with M&G's code of ethics, which it adopted in conformity with rule 204A-1. You state that M&G also acknowledges that rule 204-2 requires it to maintain records of the transaction and holdings reports that are related to the Securities in accordance with the record keeping requirements of rule 204-2 under the Advisers Act.

As explained in more detail below, you assert that the Securities are analogous to securities that rule 204A-1 excludes from the definition of reportable securities, and that transactions in the Securities by certain of M&G's access persons do not implicate the concerns that underlie the rule.

A. Securities Issued by NS&I

Rule 204A-1(e)(10)(i) excludes "direct obligations of the Government of the United States" from the code of ethics reporting requirements imposed by rule 204A-1 because the value of U.S. Government securities held by an access person could not be substantially affected by purchases or sales by an investment adviser's clients.¹⁶ You assert that the NS&I securities are analogous to U.S. Government securities solely for the purposes of rule 204A-1 and that the value of NS&I securities held by an access person could not be substantially affected by purchases or sales of NS&I securities by M&G's clients. You represent that they are issued by an agency of the U.K. government, and are backed 100% guaranteed by the U.K. Treasury. You also note that there is no secondary market for the NS&I securities. Like U.S. savings bonds that are issued by the U.S. Department of the Treasury, NS&I securities have limited transferability and are usually held to maturity or redeemed directly with NS&I. Thus, M&G's access persons do not have the ability to capitalize on client transactions in NS&I securities, or effect client transactions through their own personal trading, such that M&G's access persons' transactions

¹⁵ See, e.g., Adopting Release (shares of open-end funds "appear to present little opportunity for the type of improper trading that the access person reports are designed to uncover").

¹⁶ See, e.g., *Prevention of Unlawful Activities with Respect to Registered Investment Companies*, SEC Rel. No. IC-10162 (Mar. 20 1978)(proposing rule 17j-1 under the Company Act and stating: "[i]t would seem that the value of such [U.S. Government] securities held by an individual could not be substantially affected by purchases or sales by an investment company.").

in the NS&I securities present little opportunity for the type of improper trading that the code of ethics required by rule 204A-1 is designed to uncover.

B. AUTs and OEICs

Rule 204A-1(e)(10)(iv) excludes shares of open-end funds¹⁷ from the code of ethics reporting requirements imposed by rule 204A-1 because the method by which open-end fund shares are sold and redeemed does not present the conflict of interest situations involving access persons' personal securities transactions that could harm the interests of advisory clients.¹⁸ You assert that the AUTs and the OEICs are analogous to U.S. registered open-end funds that are excluded from rule 204A-1's code of ethics reporting requirements such that access persons' purchases or sales of the AUT and OEIC securities do not create conflict of interest situations that could harm the interests of advisory clients.

In particular, you state that the AUTs and OEICs: (a) issue shares that shareholders have the right to redeem on demand; (b) calculate net asset value on a daily basis in a manner consistent with the principles of section 2(a)(41) of the Company Act, and rule 2a-4 thereunder, as interpreted by the Commission and the staff; and (c) issue and redeem shares at the net asset value that is next calculated after receipt of the relevant purchase or redemption order consistent with the forward pricing principles of rule 22c-1 under the Company Act. You represent that the securities of AUTs and OEICs are sold at a uniform price,¹⁹ except that the distributors of AUTs or OEICs often can vary the sales loads charged on AUTs and OEICs, investor by investor. You acknowledge that the distributor's ability to vary the sales load charged to an investor could create the possibility that an access person might obtain favorable commission rates on their personal securities transactions in the securities of AUTs and OEICs in return for directing client brokerage to the distributor.²⁰ You represent, however, that all Execution-Related

¹⁷ The exclusion, on its face, applies to all open-end funds that are not "reportable funds." You note, however, that the exclusion contained in rule 204A-1(e)(10)(iv) is limited solely to U.S. registered open-end funds. See Rule 204A-1(e)(5) (defining "Fund" as an investment company registered under the Company Act). See also Adopting Release at n.46 ("The exception extends only to open-end funds registered in the U.S.; therefore, transactions and holdings in offshore funds would also be reportable.").

¹⁸ See supra note 15. See also National Compliance Services, Inc. (pub. avail. Nov. 30, 2005).

¹⁹ But see supra note 4.

²⁰ See also National Compliance Services (pub. avail. Nov. 30, 2005).

Access Persons will continue to report their transactions in and holdings of the securities of AUTs and OEICs. You further represent that there is no formal or established secondary market for the securities issued by the AUTs and the OEICs.²¹

C. Unit-linked Products

Rule 204A-1(e)(10)(v) excludes shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which is a reportable fund (“UITs”).²² The Commission presumably excluded those shares from the code of ethics reporting requirements imposed by rule 204A-1 because the method by which they are sold and redeemed does not present conflict of interest situations involving access persons’ personal securities transactions that could harm the interests of advisory clients.²³

You assert that the Unit-linked Products are analogous to U.S.-registered UITs that are excluded from rule 204A-1’s code of ethics reporting requirements such that access persons’ purchases or sales of the Unit-linked Products do not create conflict of interest situations that could harm the interests of advisory clients.²⁴ In

²¹ You note that there are AUTs and OEICs that are not analogous to U.S. registered open-end funds because of the possibility of backwards pricing and the establishment of a secondary market for their shares. You state that the securities of those issuers are not the subject of this letter, and represent that M&G will continue to treat those securities as reportable securities under its code of ethics (except as explained in footnotes 2 and 3, *supra*).

²² The exclusion, on its face, applies to all UITs that invest exclusively in open-end funds that are not “reportable funds.” You note, however, that the exclusion may be unavailable to UITs that are not registered in the United States. In the releases proposing and adopting rule 204A-1, the Commission was silent as to whether the rule 204A-1(e)(10)(v) exclusion is limited solely to U.S.-registered UITs. In light of the Commission’s intent to treat UITs that invest exclusively in open-end funds that are not reportable funds in a manner similar to open-end funds, however, it follows that the exclusion for UITs is similarly limited to UITs that are registered in the United States. *See supra* note 17.

²³ Although proposed rule 204A-1 did not contain any exclusion for UIT shares from the definition of reportable securities, the Commission added the exclusion to the final rule, stating: “Commenters suggested that these investments be excepted to the same extent as the underlying open-end funds.” *See* Adopting Release at n.47.

²⁴ You note that there are Unit-linked Products that are not analogous to U.S.-registered UITs because of the possibility of the backward pricing of the Unit-linked
(footnote continued)

particular, you state that: (a) the value of the units of the Unit-linked Product is linked exclusively to shares of AUTs and OEICs that are described above; (b) policy holders have the right to redeem the units on demand; (c) the insurers calculate the net asset value of the units on each day on which they sell or redeem a Unit-linked Product in a manner consistent with the principles of section 2(a)(41) of the Company Act, and rule 2a-4 thereunder, as interpreted by the Commission and the staff; (d) the insurers issue and redeem units at net asset value next calculated after receipt of the relevant purchase or redemption order consistent with the forward pricing principles of rule 22c-1 under the Company Act;²⁵ and (e) the units of the Unit-linked Products are sold at a uniform price consistent with the principles of section 22(d) of the Company Act, and rule 22d-1 thereunder. You represent that there is no secondary market for the units of the Unit-linked Products.

III. CONCLUSION

Based upon the facts and representations contained in your letter, as supplemented by the March 1 Telephone Call, we would not recommend enforcement action to the Commission under section 204A of the Advisers Act, or rule 204A-1 thereunder, against M&G if M&G's code of ethics does not include the Securities as reportable securities with respect to certain of its access persons' transactions and holdings in the Securities. In particular, our response is based upon your representation that M&G's code of ethics will continue to require Execution-Related Access Persons to report their transactions in and holdings of the securities of AUTs and OEICs. In addition, we would not recommend enforcement action to the Commission under section 204 of the Advisers Act, or rule 204-2(a)(13) thereunder, if M&G does not make and keep records related to certain of its access persons' transactions and holdings in the Securities.²⁶ You represent, however, that M&G would continue to keep records of Execution-Related Access Persons' transactions in and holdings of the securities of AUTs and OEICs.

products. You state that the securities of those Unit-linked Products are not the subject of this letter. You represent that M&G will continue to treat those Unit-linked Products securities as reportable securities under its code of ethics.

²⁵ But see *supra* note 8 (discussing backwards pricing by AUTs and OEICs) and note 24 (discussing backward pricing by Unit-linked Products).

²⁶ Section 204 of the Advisers Act and rule 204-2 thereunder govern the recordkeeping obligations of registered investment advisers. Rule 204-2(a)(13) requires an investment adviser to make and keep true, accurate and current records of the holdings and transaction reports that are required by rule 204A-1 under the Advisers Act.

You state in your letter that M&G serves as an investment adviser to the Fund, an investment company that is registered with the Commission under the Company Act. As an investment adviser to a registered investment company, M&G must adopt a code of ethics governing the personal securities transactions and holdings of its access persons pursuant to section 17(j) of the Company Act, and rule 17j-1 thereunder. As we noted above, rule 17j-1 under the Company Act served as the model for rule 204A-1 under the Advisers Act.²⁷ Thus, the relief that we provide in this letter with respect to the treatment of the Securities under rule 204A-1 under the Advisers Act is applicable under rule 17j-1 under the Company Act. Accordingly, based on all of the facts and representations set forth in your letter, we would not recommend enforcement action to the Commission under section 17(j) of the Company Act, or rule 17j-1 thereunder, against M&G if its code of ethics adopted pursuant to rule 17j-1 does not include the Securities as “covered securities,” as defined in the rule, with respect to certain of its access persons’ transactions and holdings in the Securities.²⁸ You represent, however, that M&G would continue to keep records of Execution-Related Access Persons’ holdings of and transactions in securities of AUTs and OEICs.

Please note that our positions are with respect to enforcement action only, and do not express any legal conclusions on the issues presented. Because our positions are based upon the facts and representations contained in your letter and the March 1 Telephone Call, different facts or representations might require a different conclusion.

Eric S. Purple
Senior Counsel

²⁷ See supra note 14.

²⁸ See, e.g., Manufacturers Advisers Corp. (pub. avail. Sept. 10, 2002) (addressing the status under rule 17j-1 under the Company Act of the securities of certain Canadian investment companies); LNC Equity Sales Corp. (pub. avail. Aug. 8, 1997) (addressing the status under rule 17j-1 under the Company Act of interests in certain insurance products).

We note that our position in The Mexico Fund, Inc. (pub. avail. Aug. 23, 1982) (concerning the treatment of obligations that are issued or guaranteed by the Mexican Federal Government under rule 17j-1 under the Company Act) is superseded to the extent that it is inconsistent with our position in this letter with respect to the NS&I securities.

INCOMING LETTER:

26 February 2007

Office of the Chief Counsel
Division of Investment Management
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Sir or Madam:

On behalf of M&G Investment Management Limited (“M&G”), we write to request no-action relief with respect to certain reporting requirements of Rule 204A-1 under the Investment Advisers Act of 1940 (the “Advisers Act”) as applied in the unusual circumstances of M&G, a United Kingdom-based investment adviser registered with the Securities and Exchange Commission (“Commission”). M&G has its principal place of business in London, England and has no place of business within the United States. M&G seeks the assurance of the Division of Investment Management (“Division”) that it would not recommend enforcement action to the Commission under Section 204 of the Advisers Act and Rules 204A-1 and 204-2 thereunder if, for purposes of the reporting requirements of Rule 204A-1 and the recordkeeping requirements of Rule 204-2, M&G does not treat as “reportable securities” (i) units or shares in certain U.K.-authorized unit trusts (“AUTs”) and open-ended investment companies (“OEICs”), (ii) U.K. unit-linked life and pension products and (iii) certain securities issued and sold by National Savings and Investments (“NS&I”), a United Kingdom Government Department and Executive Agency of the Chancellor of the Exchequer, as more fully described below.

Background

M&G is authorized and regulated in the U.K. by the U.K. Financial Services Authority (“FSA”). It employs over 500 employees, operating from two locations in England and one location in Frankfurt, Germany. M&G’s principal place of business at Governor’s House in London is the primary location of its investment advisory staff. M&G currently has one U.S. client, a U.S. registered investment company, for which M&G acts as one of multiple sub-advisers. M&G’s non-U.S. clients are predominantly U.K.-based clients, including investment funds, pension and profit-sharing plans, hedge funds and other pooled investment vehicles.

M&G maintains a number of electronic databases relating to various aspects of its advisory services that are accessible to its supervised persons. Investment advisory staff at M&G’s Governor’s House location in London have access to these databases, and to assure sufficient coverage of its Code of Ethics, M&G has deemed all employees at its Governor’s House office to be “access persons” for purposes of the code of ethics it adopted in accordance with Rule 204A-1 under the Advisers Act. Absent the relief requested herein, Rule 204A-1 requires that under M&G’s Code of Ethics, its access persons must report holdings of and transactions in all “reportable securities” as defined in Rule 204A-1(e)(10), including U.K. securities that are functionally equivalent to securities of U.S. issuers that are excluded from the “reportable security” definition because their inclusion would serve no regulatory purpose. M&G’s request for no-action relief focuses upon two types of U.K. investment companies which parallel registered U.S. open-end investment companies that are excluded from “reportable securities”, U.K. unit-

linked life and pension products and certain types of U.K. government securities which we submit are equally unrelated to the purpose of Rule 204A-1.²⁹

Reporting and Recordkeeping Requirements under Rule 204A-1 and Rule 204-2

Rule 204A-1 under the Advisers Act requires, among other things, that the code of ethics for a registered investment adviser requires access persons³⁰ to report transactions and holdings in “Reportable Securities” upon becoming an access person and at least annually thereafter and to make reports of all personal transactions in “Reportable Securities” on a quarterly basis. As explained by the Commission, Rule 204A-1 “provides the adviser with a tool to protect its clients,” requiring reports from employees “who are in a position to exploit information about client securities transactions or holdings.”³¹ Access persons are subject to Rule 204A-1 reporting requirements because they “have information about investment recommendations whose effect may not yet be felt in the marketplace”³² and “may be in a position to take advantage of their inside knowledge.”³³ This purpose, the Commission found, did not require reporting of all securities transactions. Rule 204A-1 thus excludes from the class of reportable securities five categories of securities that “appear to present little opportunity for the type of improper trading that the access person reports are designed to uncover.”³⁴ As adopted, Rule 204A-1(e)(10) creates five exceptions to the “reportable security” definition: direct obligations of the Government of the United States; bankers’ acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments including repurchase agreements; shares issued by money market funds; shares issued by open-end funds other than reportable funds and shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

In a footnote, the Commission’s release accompanying the final rules indicates that the exception for shares issued by “open-end funds other than reportable funds” “extends only to open-end funds registered in the U.S.; transactions and holdings in offshore funds would also be reportable.”³⁵ Thus, although arguably this result is not compelled by the terms of Rule 204A-1, the view expressed by the Commission in a footnote to the adopting release was that the “open-end funds” exception applies only to open-end funds registered in the U.S.

Similarly, the exception for direct obligations of the Government of the United States is, by its terms, limited to U.S. Government securities.

²⁹ M&G anticipates that its access persons will engage in a number of personal securities transactions involving these, and other securities.

³⁰ “Access Persons” are defined as persons who have access to nonpublic information about client securities transactions or about portfolio holdings of any reportable funds or who participate in or have access to nonpublic recommendations concerning client securities transactions.

³¹ Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (July 9, 2004), 69 FR 41696, 41698.

³² 69 FR at 41698.

³³ Id.

³⁴ 69 FR at 41699.

³⁵ 69 FR at 41699 n.46.

We therefore request your assurance that the staff would not recommend enforcement action to the Commission under Section 204A of the Advisers Act, or Rule 204A-1 thereunder, against M&G if M&G's code of ethics does not include the securities described in this letter as reportable securities. In addition, we request your assurance that the staff would not recommend enforcement action to the Commission under Section 204 of the Advisers Act, or Rule 204-2(a)(13) thereunder, if M&G does not make and keep records related to its access persons' transactions and holdings in the securities described in this letter.

Discussion

For the reasons set forth below, we believe that, for purposes of the reporting requirements of Rule 204A-1 and the recordkeeping requirements of Rule 204-2: (1) the shares of U.K. authorized unit trusts and open-ended investment companies described herein should be treated in the same manner as shares of U.S. open-ended investment companies which are not reportable funds, (2) the U.K. unit-linked life and pension products described herein should be treated as analogous to U.S. variable insurance products and should be exempted from reporting requirements, and (3) securities issued and sold by NS&I should be treated in the same manner as direct obligations of the U.S. Government.

1. AUTs and OEICs

The Rule 204A-1 definition of reportable securities excludes registered U.S. open-end investment companies, presumably based upon the pricing and redemption requirements and other regulatory standards applicable to those funds. These pricing and redemption requirements would, as a practical matter, allow little or no opportunity for the use of personal securities transactions in such funds to exploit nonpublic information derived from knowledge of client transactions. M&G's request for relief is based upon the similarity of U.K. AUTs and OEICs to excluded U.S. investment companies, in particular in respect of their pricing and redemption structures and practices, which render transactions in such funds highly unlikely to be able to be used to exploit nonpublic information concerning client transactions. M&G's request is limited to AUTs and OEICs other than those for which M&G serves as investment adviser and whose investment adviser or principal underwriter controls, is controlled by, or is under common control with, M&G, consistent with the "Reportable Fund" definition in Rule 204A-1(e)(9).³⁶

Like open-end funds excepted by Rule 204A-1, AUTs and OEICs are designed as vehicles for investment by the retail public and are, accordingly, stringently regulated to assure fair, accurate pricing and equitable, transparent redemption practices. AUTs and OEICs are pooled investment vehicles operated on an open-ended basis. Both AUTs and OEICs issue units/shares redeemable on demand, are subject to valuation requirements that assure close correlation between share prices and the per share value of their portfolio assets, tend to have widely dispersed public ownership, and are highly regulated.³⁷

Application of the Rule 204A-1 reporting requirements to AUT and OEIC transactions by M&G access persons would impose upon M&G's access persons burdens which are far greater than those imposed upon U.S.-based advisers with respect to the analogous forms of domestic public investment vehicles. M&G recognizes that objective, even-handed application of Rule 204A-1 to non-U.S. based registered investment advisers may not in every case warrant exclusion of local investment funds from the Rule's reporting requirements. However, U.K. OEICs and AUTs represent vehicles with clear functional

³⁶ M&G, however, may serve as an investment adviser to AUTs or OEICs, or the investment adviser or principal underwriter of an AUT or an OEIC may control M&G, or may be controlled by or under common control with M&G. M&G will continue to treat any such AUT or OEIC as a reportable fund, as defined in Rule 204A-1(e)(9) under the Advisers Act, and will continue to require its access persons to report their transactions and holdings in the securities of such issuers.

³⁷ U.K. unit trusts differ from OEICs in that a U.K. unit trust's assets are held in trust for investors under the terms of a trust deed, rather than in a separately incorporated entity.

resemblance to excluded U.S. funds in this context and operate under a similarly comprehensive regulatory regime. We provide below further information concerning the regulatory standards applicable to OEICs and AUTs.

AUTs and OEICs are governed by the U.K. Financial Services and Markets Act 2000 (“FSMA”) (with effect from December 1, 2001) and are subject to regulation by the FSA. The FSMA and FSA regulations extensively regulate OEICs and AUTs, governing such matters as authorization of trustees and managers, issuance of shares, investment powers, duties of directors and trustees, depositaries, charges and expenses, income allocation and distribution, reports to shareholders and unitholders, shareholder/unitholder meetings, and suspension and termination of funds. FSMA Section 243(10) provides that the participants in a collective investment scheme must be entitled to have their units redeemed at a price not significantly different from the per share net asset value of the fund’s property. To the extent that sales loads are imposed, the amount of such loads is publicly available. The securities of AUTs and OEICs are sold at a uniform price,³⁸ except that the distributors of AUTs or OEICs often can vary the sales loads charged on AUTs and OEICs, investor by investor. M&G recognizes that the distributor’s ability to vary the sales load charged to an investor could create the possibility that an access person might obtain favorable commission rates on their personal securities transactions in the securities of AUTs and OEICs in return for directing client brokerage to the distributor.³⁹ M&G will ensure that its code of ethics will continue to require access persons who may direct, or influence the decision to direct, the execution of portfolio transactions of M&G’s U.S. client to broker-dealers and other market intermediaries to include the securities of AUTs and OEICs in their transaction and holdings reports (“Execution-Related Access Persons”). Furthermore, M&G will continue to keep records of Execution-Related Access Persons’ transactions in and holdings of the securities of AUTs and OEICs.

Forward pricing is the most common method of pricing authorized funds in the U.K. While forward pricing is not mandatory in all cases, use of historic pricing⁴⁰ is extremely circumscribed under FSA rules.⁴¹ FSA rules require, for example, that funds give investors a forward price upon request.

³⁸ See *infra* note 14.

³⁹ See National Compliance Services (pub. avail. Nov. 30, 2005).

⁴⁰ The term “historic pricing” is generally used in the United Kingdom to denote the practice of calculating the net asset value of an AUT or OEIC share prior to the receipt of a purchase or redemption order, and which is commonly known in the United States as “backward pricing.”

⁴¹ The FSA currently operates two alternative sets of rules for OEICs and AUTs: the Collective Investment Scheme sourcebook (“CIS”) and the New Collective Investment Scheme sourcebook (“COLL”). OEICs and AUTs must elect to apply either CIS or COLL, subject to certain restrictions. CIS and COLL both require forward pricing to be used in the following situations:

- (1) for certain volatile funds, including funds dedicated to derivatives or which invest entirely in warrants (CIS 4.7.4R(3); COLL 6.3.9R(3)(a));
- (2) for funds where the regular valuation points are more than one day apart (CIS 4.7.5R Table at 3; COLL 6.3.9R(3)(b));
- (3) for any request to deal which reaches the fund manager through the post or by any similar form of non-interactive communication (CIS 4.7.5R Table at 15; COLL 6.3.9R(3)(c));
- (4) for direct issue or cancellation of units (as opposed to sale and redemption of units from the fund manager’s own inventory) (CIS 4.7.5R Table at 16; COLL 6.3.9R(3)(d));
- (5) where the applicant for the sale or redemption so requests (CIS 4.7.5R Table at 13; COLL 6.3.9R(3)(e)); and
- (6) where the fund manager has reason to believe at any time that the price that would reflect the current value of the scheme property would vary by more than 2% from the last calculated price, unless the fund manager has decided to carry out an additional valuation (CIS 4.7.5R Table at 9; COLL 6.3.9R(3)(f)).

Notwithstanding any potential availability of historic pricing, M&G will ensure that its access persons always receive forward prices by requiring in its Code of Ethics that its access persons must always request to be given a forward price on both purchases and redemptions of units in AUTs and shares in OEICs, otherwise M&G's Code of Ethics will treat those securities as reportable securities.

Further, while AUTs and OEICs are not required to calculate net asset value daily, most as a matter of practice do so. For purposes of calculating net asset value, most U.K. OEICs and AUTs value portfolio securities for which market quotations are readily available at current market value and generally value other securities and assets at fair value as determined in good faith by fund managers or trustees.⁴² Presently, there is no formal or established secondary market in OEICs and AUTs, paralleling the U.S. open-end fund marketplace in which there generally is no secondary trading.⁴³

M&G's request for relief thus reflects the special circumstances presented by transactions by U.K. access persons in the most common forms of public investment in the U.K., vehicles which by virtue of their design and regulation are fortified against the abuses targeted by Rule 204A-1 reporting requirements. Given the specific parallels between U.S. registered open-end investment companies and U.K. AUTs and OEICs, including redemption on demand and forward pricing reflecting the net value of fund assets, we believe that reporting of such transactions by M&G access persons imposes an unwarranted burden. As in the case of U.S. mutual funds, U.K. OEIC and AUT share/unit prices reflect net asset values, calculated on a forward basis, and are available to the general public. In no event would an M&G employee actually have access to nonpublic information concerning the portfolio holdings of a fund eligible for the relief we seek, as this relief is not sought with respect to any fund for which M&G acts as adviser or whose adviser or underwriter is controlled by or is an affiliate of M&G. To the extent that an M&G access person knew of an anticipated client transaction in a security held or to be acquired by an AUT or OEIC, even assuming that such a client transaction could have a price impact upon the OEIC's or AUT's aggregate portfolio and this could be determined without access to nonpublic portfolio information, the price impact on the security in question would be dissipated by the time an access person's personal transaction in the fund's shares would be effected at the forward price. In sum, purchases and sales of AUTs and OEICs do not appear to create conflicts of interest situations that could harm the interests of advisory clients.

The Division has addressed an analogous issue in granting no-action relief with respect to reporting under Rule 17(j) under the Investment Company Act of 1940, as amended (the "1940 Act") of transactions in certain Canadian mutual funds. In a September 10, 2002 letter, the Division confirmed that it would not recommend enforcement action under Section 17(j) of the 1940 Act and Rule 17(j) thereunder if, for purposes of Rule 17j-1 reporting and recordkeeping requirements, the requestors' access persons did not report personal trading transactions in and holdings of certain Canadian mutual funds and records were not maintained of such transactions and holdings.⁴⁴ The requestors' ultimate parent was based in Canada, many of their access persons resided in Canada, and the Canadian mutual funds as to which relief was sought were shown to have similarities in operation and regulation to open-end U.S. funds. The Division granted the requested reporting and recordkeeping relief based upon the requestors' representations concerning the Canadian mutual funds' shareholders' right to redeem on demand; daily

⁴² Some AUTs are dually priced (*i.e.*, sell shares at a "bid" price and buy shares at an "ask" price, which prices reflect the cost of selling or acquiring the portfolio securities underlying a redemption or purchase of shares in the AUT or OEIC). The ability to dual price securities has recently been extended to cover OEICs.

⁴³ Currently, a small number of AUTs are listed on a stock exchange, although the AUTs are not actively traded on that market at present. It is possible that a secondary market may develop for AUTs and OEICs. M&G's code of ethics will require all of its access persons to purchase and redeem exchange listed securities directly from the issuer, otherwise M&G's code of ethics will treat such securities as reportable securities.

⁴⁴ Manufacturers Adviser Corp. (pub. avail. Sept. 10, 2002).

calculation of net asset value in a manner consistent with the principles of Section 2(a)(41) of the 1940 Act and Rule 2a-4 thereunder (which, as represented, was done daily in practice although not required to be daily); issuance and redemption of shares at the net asset value next determined after receipt of the relevant purchase or redemption order consistent with the “forward pricing” principles of Rule 22c-1 under the 1940 Act; and the absence of a secondary market in the relevant shares. As discussed above and subject to the exceptions discussed above, each of these criteria is satisfied in the case of U.K. OEICs and AUTs. In particular, the AUTs and OEICs: (a) issue shares that shareholders have the right to redeem on demand; (b) calculate net asset value on a daily basis in a manner consistent with the principles of Section 2(a)(41) of the 1940 Act, and Rule 2a-4 thereunder, as interpreted by the Commission and the staff; (c) issue and redeem shares based on the net asset value that is next calculated after receipt of the relevant purchase or redemption order consistent with the forward pricing principles of Rule 22c-1 under the 1940 Act; and (d) are sold at a uniform price consistent with the principles of Section 22(d) of the 1940 Act, and Rule 22d-1 thereunder.⁴⁵

2. U.K. Unit-Linked Life and Pension Products

U.K. unit-linked pension products and endowment policies are insurance contracts⁴⁶ issued by insurance companies that are authorized to do business in the United Kingdom. U.K. unit-linked pension products may be considered to be securities under U.S. law,⁴⁷ and as such, would potentially fall within the definition of “reportable security.” Access persons of a U.S.-domiciled registered adviser generally would not be required to report ownership interests in variable insurance products in reports pursuant to Rule 204A-1. An ownership interest in shares of a U.S. mutual fund underlying a U.S. variable insurance product would generally be exempt from the reporting requirements because shares of most mutual funds are excepted from the definition of “reportable security”. In addition, ownership interests in units of a U.S. insurance company separate account investing in an underlying mutual fund generally would also be exempt from the Rule 204A-1 reporting requirements, because shares issued by unit investment trusts invested exclusively in one or more open-end funds are exempted from the definition of “reportable security.”⁴⁸ U.K. unit-linked life and pension products can be structured differently than U.S. variable insurance products. We submit, however, that the U.K. unit-linked products are broadly analogous to U.S. variable insurance products. The ownership interests in U.K. unit-linked life and pension policies ought to be exempted from the ambit of the Code of Ethics rule because investment in such products does not raise the concerns which the Code of Ethics is designed to address.

As in the U.S., there are a range of life and pension contracts offered in the U.K. as tax-deferred investment-linked retirement and investment savings vehicles. Like U.S. variable insurance products, these are retirement savings contracts and, in the case of endowment policies, investment savings vehicles

⁴⁵ There are AUTs and OEICs that are not analogous to U.S. registered open-end funds because of the possibility of backwards pricing or the establishment of a secondary market for their units. The securities of those issuers are not the subject of this letter, and M&G will continue to treat those securities as reportable securities under its code of ethics, except as otherwise described in this letter.

⁴⁶ There are other non-insurance based U.K. personal pensions products, but most of these are organised as AUTs and OEICs and would therefore be covered by the discussion above relating to such products.

⁴⁷ See, e.g., *S.E.C. v. Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959), holding that variable annuity contracts that “plac[ed] all the investment risks on the annuitant, none on the [insurance] company” did not fall within the insurance exemptions to the definitions of “security” in the Securities Act of 1933 and “investment company” in the 1940 Act.

⁴⁸ See 69 Fed. Reg. 41,696, 41,699 n. 47 (2004) (“This exception is aimed at variable insurance contracts that are funded by unit investment trusts. Such separate accounts typically are divided into subaccounts, each of which invests exclusively in shares of an underlying open-end fund. Commenters suggested that these investments be excepted to the same extent as the underlying open-end funds.”).

that give participants the option of investing in “units” of one or more investment-linked funds with differing investment objectives.⁴⁹

Certain U.K. life and pension contracts are structured similarly to U.S. variable insurance products, and assets underlying a life or pension contract are invested into an OEIC or AUT authorized and regulated by the FSA. Unit-linked pension products and endowment policies that invest into an OEIC or AUT generally work as follows. A potential insured person receives a “proposal of insurance” that lists a variety of investment options from which he or she can select, and which are based upon interests in AUTs or OEICs. When the insurer issues the insurance contract, its benefits and ultimate value are linked to the performance of a fixed number of units in the pool of AUTs and/or OEICs that is selected by the insured, and the value of the insurance contracts fluctuates with the prices of those underlying funds attributable to that contract. The insurer maintains the assets underlying the units in its name, and the participant has no legal claim on those assets, but only a claim on the contract value of the units themselves. Proprietary or external investment managers employed by the product provider manage the portfolios of the funds. The participant’s investment accumulates tax-free in the case of unit-linked pension funds, at least until benefits are paid. Participants are normally allowed to switch their units between different funds within the same life or pension contract.

Other U.K. life and pension products, however, may be structured differently than U.S. variable insurance products. The assets underlying the pension or life product may be invested into a segregated portfolio of assets which is not an OEIC or AUT. M&G requests relief only with respect to unit-linked products whose performance is linked to an OEIC or AUT.⁵⁰

We submit that the essential elements of the no-action relief granted in Manufacturers Adviser Corp., which concerned Canadian mutual funds, can be met in substance with respect to such life and pension policies, if changes necessary to reflect the different nature of such life and pension products are made. First, the units underlying the Unit-linked Products are redeemable by the insurer in cash at the units' per unit net asset value, even though the surrender rights of the U.K. products by participants are subject to various legal or fiscal restrictions related to the tax-deferred nature of the products. For example, in the case of pension policies, they may only be redeemed prior to maturity by transfer into another pension product. Second, most pension policies, as a matter of practice, only effect transfers out of the pension scheme or between funds within the scheme on a forward pricing basis, but historic pricing is not prohibited.⁵¹ Third, as discussed above, the value of the units of the underlying AUT or OEIC is based on the net asset value of the AUT's or OEIC's securities. There is no requirement to calculate NAV on a daily basis (and many products do not do so in practice), but this is unlikely to give rise to any opportunity for abuse, at least where forward pricing is used.⁵² Fourth, units underlying Unit-linked Products are purchased at a uniform price based on the net asset value per share of the units, and, to the extent that a sales commission is paid, it is pursuant to a schedule which is publicly available. Lastly,

⁴⁹ The value of certain Unit-linked Products may be linked to an underlying pool of assets comprised of units of other Unit-Linked Products that are in turn linked to interests in the types of AUTs and OEICs that are described above.

⁵⁰ To the extent that a Unit-linked Product is not analogous to U.S.-registered unit investment trusts (such as issuers that engage in historic pricing), M&G will continue to treat those Unit-linked Products as reportable securities under its Code of Ethics.

⁵¹ M&G’s code of ethics will require all access persons who purchase Unit-Linked Products either to: (a) confirm that the terms of their policy requires the issuing insurance company to demand forward pricing of the securities of the AUTs and OEICs that underlie their Unit-Linked Products; or (b) obtain written assurances from the insurer or its agents that the insurer demands forward pricing of those securities. M&G’s code of ethics will continue to treat Unit-Linked Products as reportable securities with respect to any access person who does not comply with one of those undertakings.

⁵² Most insurers determine the net asset value of the units of Unit-linked Products on a daily basis, although some determine the net asset value on a weekly basis. Unit-linked Products with weekly valuations only accept purchase orders or redemptions orders on the same day of the week that the net asset value is calculated.

because these are insurance contracts that are personal to the policyholder, the units underlying the insurance contract are generally unsuitable for secondary market trading; there is no secondary market for the units.⁵³ With life policies, there is likely to be a general ability to terminate the contract, but early termination could have a detrimental effect on the surrender value of the contract.

In sum, the Unit-linked Products are analogous to U.S. variable insurance products in that: (a) the value of the units of the Unit-linked Product is linked exclusively to shares of AUTs and OEICs that are described in this letter; (b) policyholders have the right to redeem the units on demand; (c) the insurers calculate the net asset value of the units on each day on which they sell or redeem a Unit-linked Product in a manner consistent with the principles of Section 2(a)(41) of the 1940 Act, and Rule 2a-4 thereunder, as interpreted by the Commission and the staff; (d) the insurers issue and redeem units at net asset value next calculated after receipt of the relevant purchase or redemption order consistent with the forward pricing principles of Rule 22c-1 under the 1940 Act; and (e) the units of the Unit-linked Products are issued at a uniform price consistent with the principles of Section 22(d) of the 1940 Act, and Rule 22d-1 thereunder.

We submit that, like U.S. variable insurance products, U.K. unit-linked pension products for which M&G does not serve as investment adviser to any underlying fund should present little opportunity for the types of improper trading that Rule 204A-1 is intended to cover, and therefore holdings in such products should be excepted from being considered “reportable securities.”⁵⁴

3. NS&I Securities

Rule 204A-1 excludes "direct obligations of the Government of the United States" from the definition of "reportable security". Based upon the purposes of the Rule, we believe, solely for the purposes of Rule 204A-1, that certain U.K. government securities are analogous to U.S. government securities, and should receive similar treatment. Like securities of the United States government, U.K. government securities are highly rated (they currently hold a Fitch rating of AAA, which is the highest rating and the same rating as the securities of the United States government) and the market for them is large (£50.1 billion of gilts were issued in 2004-5). In this letter we are requesting relief with respect to only certain types of U.K. government securities for which there is no trading market that could implicate the purposes of Rule 204A-1: Premium Savings Bonds (“Premium Bonds”), Index-linked Savings Certificates and Fixed Interest Savings Certificates (“Savings Certificates”) and Guaranteed Equity Bonds, Capital Bonds, Children’s Bonus Bonds, Fixed Rate Savings Bonds, Income Bonds and Pensioners Guaranteed Income Bonds (“Bonds”).

Premium Bonds, Savings Certificates and Bonds are U.K. government securities issued and sold directly to the public through NS&I. NS&I is an executive agency of the Chancellor of the Exchequer of the United Kingdom. The Chancellor of the Exchequer is responsible for, among other things, approving interest rates and the terms and conditions of NS&I products.

The terms and conditions of these securities are such that they provide no opportunity for individuals to profit from nonpublic information. As described below, there is no secondary trading

⁵³ Often, when a participant switches units to a different fund or a policy is terminated, the insurer does not redeem the underlying units, but holds the units in inventory until they can be sold to another participant. An access person who is an insured would not have the ability to determine whether an insurer purchased or sold shares of an AUT or OEIC from the issuer itself or in any secondary market, and consequently could not obtain any benefit from a distributor of the underlying AUT or OEIC securities in connection with any variance in the sales load charged by an underlying AUT or OEIC.

⁵⁴ M&G undertakes to treat any Unit-linked Product as a reportable fund under its Code of Ethics if the value of the Unit-linked Product is linked one or more AUTs or OEICs that are reportable funds.

market for the Premium Bonds, Savings Certificates, and Bonds, and the securities can be transferred to another person only in limited circumstances. NS&I securities are usually held to maturity or redeemed directly with NS&I. The value of the NS&I securities held by an access person could not be substantially effected by purchases or sales of NS&I securities by M&G's clients.

Premium Bonds. Premium Bonds are issued in units of £1 under the U.K. National Loans Act 1968 and are subject to the U.K. Premium Savings Bonds Regulations 1972. Instead of paying interest, Premium Bonds provide investors with a chance to win tax-free prizes. Investors are allocated a series of numbers for each £1 invested. Once an investor has held his Premium Bonds for a full calendar month, they are eligible to take part in the monthly prize draws. They will participate in each prize draw until the Premium Bonds are cashed in. Investors can cash in their Premium Bonds at any time. Their investments are 100% guaranteed by the U.K. Treasury.

All elements of the return on the Premium Bonds are both public and independent of the influence of individual investors.

- The size of the prize fund for each month is equal to one month's interest on each Premium Bond unit eligible for the prize draw that month. The rate of interest is determined by the U.K. Treasury and published in the London, Edinburgh and Belfast Gazettes and the NS&I interest rate leaflet available at post offices and on the NS&I website.
- The number of prizes in each month's draw is calculated by dividing the total number of Premium Bond units by the odds for the draw. The odds for the draw are determined by the U.K. Treasury. The odds for each monthly draw are published in the same manner as the interest rate (described above).
- The winning numbers are generated randomly by electronic random number indicator equipment ("ERNIE"). After ERNIE has generated the numbers, they are compared in the order they were generated against all eligible Premium Bond numbers – those that match win a prize. Each individual Premium Bond has a separate and equal chance of winning a prize, regardless of when, where and how it was bought.
- Premium Bonds are not transferable at any time. Therefore, there is no opportunity for individuals to use nonpublic information to profit from changes in the price of the Premium Bonds in a secondary market.

Savings Certificates. Savings Certificates are issued under the U.K. National Loans Act 1968 and are subject to the Savings Certificates Regulation 1991. They provide a tax-free rate of return for a fixed term. The Savings Certificates are 100% guaranteed by the U.K. Treasury.

Like the Premium Bonds, Savings Certificates provide almost no opportunity for individuals to gain from nonpublic information.

- The rate of return is publicly disclosed and fixed for the term of the Savings Certificate.⁵⁵ The relevant interest rates are published in the London, Edinburgh and Belfast Gazettes and the NS&I interest rate leaflet available at post offices and on the NS&I website.

⁵⁵ In the case of Index-linked Savings Certificates, investors receive a rate of return equal to inflation (as measured by the Retail Price Index) plus a fixed interest rate.

- As there is no secondary market in the Savings Certificates, there is no secondary market price to manipulate or exploit.⁵⁶
- Limits on the amount of Savings Certificates that may be held make them an unlikely target for insider trading. Each term of Savings Certificates has its own issues of certificates issued in sequence (“Issues”). Different interest rates apply to each Issue within each term. An investor may not hold more than £15,000 in Savings Certificates for any single Issue.⁵⁷

Bonds. Bonds are issued under the National Loans Act of 1968 and generally are subject to the National Savings Stock Register Regulations 1976.⁵⁸ The Bonds are 100% guaranteed by the U.K. Treasury. Although generally possessing more flexible terms than Savings Certificates, Bonds share the qualities of Savings Certificates that make them an unlikely source of profit for those seeking to take advantage of inside knowledge.

- With the exception of the Guaranteed Equity Bonds and the Income Bonds, the Bonds provide a rate of return that is guaranteed for the term of the investment.⁵⁹ As the Guaranteed Equity Bonds provide a rate of return based on the growth of the FTSE 100 Index (an index of the 100 largest quoted companies in the United Kingdom) and the Income Bonds provide a rate of return set by the U.K. Treasury, the rates of return for these securities, while not fixed, are not subject to manipulation from the market activities of any third party.
- Bonds generally have a higher maximum investment amount than Savings Certificates (£3,000 in the case of Children’s Bonus Bonds but £1,000,000 in the case of the other Bonds) but the maximum is still sufficiently low to ensure that no single investor holds a material amount of the Bonds. No single type of Bond has less than £500 million outstanding.
- With the exception of the Guaranteed Equity Bonds and the Children’s Bonus Bonds, the terms of the Bonds provide that they may only be transferred with the consent of the Director of Savings and that such consent will not generally be granted if the transfer is by way of sale. There is no secondary market for any type of Bond.

As discussed above, the Premium Bonds, Savings Certificates, and Bonds represent little opportunity for the type of improper trading that the Code of Ethics is designed to uncover. It should therefore not be necessary to treat these securities as “reportable securities” under Rule 204A-1.

Conclusion

Based on the foregoing representations and analysis, we believe that, for purposes of the reporting requirements of Rule 204A-1 and recordkeeping requirements of Rule 204-2 (1) the shares of U.K. authorized unit trusts and open-ended investment companies described herein should be treated in the same manner as shares of U.S. open-ended investment companies, (2) the U.K. unit-linked life and pension products described herein should be treated in the same manner as U.S. variable insurance products and (3) Premium Bonds, Savings Certificates and Bonds should be treated in the same manner as direct obligations of the U.S. Government. We therefore request your assurance that the staff would not recommend enforcement action to the Commission under Section 204A of

⁵⁶ However, investors may transfer their Savings Certificates upon completing and returning to the NS&I a transfer form signed by both the transferor and transferee.

⁵⁷ There is no limit on the amount of Savings Certificates that may be purchased with the proceeds of Savings Certificates that have been cashed in.

⁵⁸ Children’s Bonus Bonds are regulated under the Savings Certificates Regulations 1991.

⁵⁹ The rate of return for the Children’s Bonus Bonds is only guaranteed for the first five years but may be held until the child’s 21st birthday.

the Advisers Act, or Rule 204A-1 thereunder, against M&G if M&G's code of ethics does not include the securities described in this letter as reportable securities. In addition, we request your assurance that the staff would not recommend enforcement action to the Commission under Section 204 of the Advisers Act, or Rule 204-2(a)(13) thereunder, if M&G does not make and keep records related to its access persons' transactions and holdings in the securities described in this letter.

Please feel free to contact the undersigned at +44 (0) 207-184-7313 if you have any questions concerning this request. We also ask that, if you believe your response to this no- action request will be negative, you contact us to discuss the request.

Very truly yours,

Karen L. Anderberg
Dechert LLP

cc. Anthony Ashplant, M&G Investment Management Limited
James Hudson, M&G Investment Management Limited