Pilgrim America Group, Inc.
Publicly Available October 8, 1996

SEC LETTER
Investment Company Act of 1940 Section 15(A)

October 8, 1996

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Our Ref. No. 96-259-CC
Pilgrim America Group, Inc.
File No. 132-3

Your letter of May 20, 1996 requests our assurance that we would not recommend enforcement action to the Commission under section 15(a) of the Investment Company Act of 1940 (the "Investment Company Act") if Pilgrim America Group, Inc. ("Pilgrim America") pledges all of the outstanding voting securities of its wholly owned subsidiary, Pilgrim America Investments, Inc. ("PAI") without obtaining approval of new advisory contracts by the shareholders of the Pilgrim America Group of Funds (the "Funds").

PAI serves as investment adviser to the Funds. Pilgrim America and its affiliates have entered into a credit agreement (the "Credit Agreement") with First Bank National Association (the "Bank"), under which the Bank will loan funds to Pilgrim America and its affiliates.1 As collateral for the loan, Pilgrim America will, pursuant to a pledge agreement (the "Pledge Agreement"), pledge to the Bank all of the outstanding voting securities of PAI. You state that, in accordance with the Pledge Agreement, the Bank would take possession of the certificates representing PAI's voting securities in order to perfect the Bank's security interest in those securities. You also state, however, that Pilgrim America would retain all voting and other rights with respect to the securities, and the Pledge Agreement would give the Bank no authority to take part in, or influence, the management of PAI or the Funds.2

Section 15(a)(4) of the Investment Company Act states that an investment advisory contract with a registered investment company must provide, in substance, for its automatic termination in the event of its assignment. Section 2(a)(4) of the Investment Company Act defines "assignment" to include "any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor." Rule 2a-6 under the Investment Company Act provides a safe harbor from the definition of "assignment" for any transaction that does not result in a change of actual control or management of the investment adviser to an investment company.

You maintain that Pilgrim America's pledge of PAI's securities should not be considered a hypothecation of a controlling block of voting securities within the meaning of section 2(a)(4), and thus should not result in an assignment triggering the application of section 15(a)(4). You also maintain that, even if the pledge is considered a hypothecation of voting securities, the pledge is not an assignment under rule 2a-6 because it will not result in any change of actual control or management of PAI.

In enacting the Investment Company Act, Congress specifically found that "the national public interest and the interest of investors are adversely affected when [the control or management of investment companies] . . . is transferred, without the consent of their security holders."3 Section 15(a)(4) was intended to prevent such trafficking in investment advisory contracts.4 Consistent with the purpose of section 15(a)(4), section 2(a)(4) includes in the definition of "assignment" transfers or hypothecations of a controlling block of the assignor's voting securities, transactions that presumably would transfer to another person the ability to control or manage an investment adviser.

To determine whether there has been a transfer or hypothecation of a controlling block of securities for purposes of section 2(a)(4), it is necessary to look to section 2(a)(9) of the Investment Company Act,5 which defines "control" as the ability to exercise a controlling influence over the management or policies of a company, and presumes such control when a person beneficially owns more than 25% of a company's voting securities. The definition of "assignment" in section 2(a)(4) does not, however, include all changes in control, but only those involving the transfer or hypothecation of a controlling block of voting securities.6 The relevant inquiry, then, in determining whether there has been such a transfer or hypothecation is whether the transferee or pledgee has, as a result of the transaction, assumed a sufficient voting interest to enable the person to exercise the ability to direct the management or policies of the adviser.7

In the transaction described in your letter, the pledge of PAI's securities is not accompanied by the right to vote those shares.8 In the absence of a transfer of voting rights, a pledge of securities ordinarily cannot be considered an assignment within the meaning of section 2(a)(4).9

Based on the facts and representations in your letter, particularly your representations that Pilgrim America would retain all voting and other rights with respect to the securities, and that the Pledge Agreement would give the Bank no authority to take part in, or influence, the management of PAI or the Funds, we would not recommend that the Commission take any enforcement action under section 15(a) if Pilgrim America pledges PAI's securities without obtaining shareholder approval.10 You should note that different facts or representations might require a different conclusion.

Sarah A. Wagman
Attorney

Footnotes

1 The proceeds of the Credit Agreement will be used, among other purposes, to finance the distribution of certain classes of shares of certain open-end Funds.

2 You state that the Pledge Agreement provides that Pilgrim America must not exercise or refrain from exercising any voting rights if such action could reasonably be expected to have a material adverse effect on the value of PAI's securities. See infra note 8.

3 Section 1(b)(6) of the Investment Company Act (findings and declaration of policy).

4 Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (1940) (statement of David Schenker).

5 See Dean Witter, Discover & Co. (pub. avail. Feb. 8, 1993). See also Willheim v. Murchison, 342 F.2d 33, 37-39 (2d Cir.), cert. denied, 382 U.S. 840 (1965).

6 See Willheim v. Murchison, 342 F.2d at 40.

7 This analysis is consistent with the legislative history of the Investment Company Act because without the transfer or hypothecation of such a voting interest, the abuses Congress sought to prevent through section 15(a)(4) cannot occur.

8 You assert that the provision of the Pledge Agreement providing that Pilgrim America must not exercise any voting right in such a manner as to have a material adverse effect on the value of PAI's voting securities will not limit significantly Pilgrim America's voting rights because it generally will be in Pilgrim America's best interests not to take any actions that would adversely affect the value of PAI's securities. You also state that, although under the Pledge Agreement the Bank has the right at any time (even in the absence of a default) to cause the certificates representing PAI's voting securities to be transferred of record into the name of the Bank or its nominee, this would not affect any of the rights retained by Pilgrim America with respect to those securities.

9 In the event of a default, however, the Bank would have the right under the Pledge Agreement to sell the securities of PAI that the Bank holds as collateral, and could exercise all voting rights with respect to the securities. The default would result, therefore, in an assignment of PAI's investment advisory contracts within the meaning of section 2(a)(4).

10 See Funds, Inc. (pub. avail. Aug. 12, 1976); Wall Street Management Corporation (pub. avail. Sept. 7, 1974).

Because we do not consider the pledge to constitute an assignment within the meaning of section 2(a)(4), we do not find it necessary to analyze your request under rule 2a-6.

INCOMING LETTER

May 20, 1996

Jack W. Murphy, Associate Director and Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Assignment of Investment Advisory Contracts

Dear Mr. Murphy:

On behalf of Pilgrim America Group, Inc. ("Pilgrim America"), Pilgrim America Investments, Inc. (the "Investment Manager"), and the investment companies in the Pilgrim America Group of Funds (the "Funds"),1 we are writing to seek assurance that the staff of the Division of Investment Management would not recommend enforcement action to the Commission under Section 15(a) of the Investment Company Act of 1940 (the "1940 Act") if Pilgrim America pledges all of the outstanding voting securities of the Investment Manager in connection with a credit agreement, and certain related agreements, between First Bank National Association (the "Bank") and Pilgrim America dated as of April 28, 1995 (the "Credit Agreement"). The proceeds of the Credit Agreement will be used, among other purposes, to finance the distribution of certain classes of shares of each of the open-end funds in the Pilgrim America Group of Funds (the "Open-End Funds").

Introduction

Pilgrim America and the Investment Manager are each organized as Delaware corporations. The Investment Manager serves as investment manager to each of the Funds pursuant to investment management agreements (the "Investment Management Agreements"). The Investment Management Agreements for Pilgrim America MagnaCap Fund, Pilgrim America High Yield Fund, and Pilgrim Government Securities Income Fund, Inc. (the "Elite Series") were approved by shareholders of each of the Elite Series funds at meetings held on April 4, 1995. The Investment Management Agreement for Pilgrim America Masters Asia-Pacific Equity Fund, Pilgrim America Masters MidCap Value Fund, and Pilgrim America Masters LargeCap Value Fund (the "Masters Series") was approved by the sole shareholder of each of the Masters Series funds by written consent on June 27, 1995.

The Investment Manager is a wholly owned subsidiary of Pilgrim America, which in turn is a wholly owned subsidiary of Express America Holdings Corporation, a publicly owned company the shares of which are traded on the NASDAQ National Market System ("Express America"). Through its subsidiaries, Express America engages in the financial services business, primarily the

management and distribution of investment companies. The Investment Manager began serving as Investment Manager for each of the Elite Series funds as of the close of business on April 7, 1995 in connection with the acquisition by Express America, Pilgrim America, the Investment Manager and Pilgrim America Securities, Inc. ("Distributor"), Distributor to the Open-End Funds, of certain of the assets of the former Pilgrim Group Inc. and its affiliates (the "Acquisition"). Prior to the Acquisition, Pilgrim Management Corporation, a subsidiary of Pilgrim Group Inc., served as investment adviser to the Funds, Pilgrim America Investments, Inc. and Pilgrim Management Corporation are not affiliated with each other.

Each Open-End Fund has implemented a multiple-class pricing system in compliance with Rules 6c-10 and 18f-3 under the 1940 Act.2

Pilgrim America and its affiliates have entered into the Credit Agreement with the Bank whereby the Bank will lend funds to be used for, among other purposes, financing the sale of certain classes of the Open-End Funds' shares. During the negotiation of the Credit Agreement, the parties considered various options regarding the structure of the lending arrangements and concluded, among other things, that Pilgrim America's pledge of all of the outstanding voting securities of the Investment Manager pursuant to a pledge agreement (the "Pledge Agreement") would provide the most favorable terms for Pilgrim America. Pilgrim America, with the consent of the Bank, has not yet pledged the securities of the Investment Manager because of concern that this might be deemed an assignment of the Investment Management Agreements between the Funds and the Investment Manager under Section 2(a)(4). An assignment would terminate the Investment Management Agreements and require approval of new Investment Management Agreements by the Board of Directors/Trustees and shareholders of each Fund in accordance with Section 15(a). Consequently, the Bank and Pilgrim America agreed that Pilgrim America would submit this no-action request seeking the staff's views on this issue.

Under the terms of the Pledge Agreement, the Bank would merely hold the voting securities of the Investment Manager as collateral for the loan. Pilgrim America would deliver the certificates representing the Investment Manager securities to the Bank for the sole purpose of perfecting the Bank's security interest in the securities for purposes of the Uniform Commercial Code.3 The Bank has the right at any time (even in the absence of a default) to cause the certificates to be transferred of record into the name of the Bank or its nominee, although this would not affect any of Pilgrim America's rights with respect to these securities. Pilgrim America will retain all voting and other consensual rights with respect to the Investment Manager securities, but Pilgrim America must not exercise or refrain from exercising any voting rights if this action could reasonably be expected to have a material adverse effect on the value of the Investment Manager securities or any material part thereof. The Pledge Agreement states that "the powers conferred on the Bank...are solely to protect its interest in the collateral [Investment Manager securities]." The Pledge Agreement does not grant the Bank any authority to take part in the management of the Investment Manager (and therefore of the Funds), confers no voting rights in the Investment Manager's voting securities in the absence of default, and does not grant the Bank any right to exercise any other influence over the management or control of the Investment Manager.

In the event of a default, the Bank would have certain rights as specified in the Credit Agreement and the Pledge Agreement, including the right to sell the Investment Manager securities and to exercise all voting rights with respect to these securities. Our request for no-action relief is limited to the period prior to which the Bank exercises its rights upon default. In addition, any sale of the Investment Manager securities or retention by the Bank of title to the Investment Manager securities after a default presumably would be deemed an assignment of the Investment Management Agreements under Section 2(a)(4) of the 1940 Act, and, in this event, would terminate these Agreements unless each Fund received the prior approval of this assignment from its Board and shareholders. Presumably, the Bank would not exercise any voting rights with respect to the Investment Manager's securities without the prior approval of shareholders of the Funds.

The staff has announced its position that, as a matter of policy, it will no longer respond to routine no-action or interpretive requests regarding the application of Rule 2a-6 to a particular transaction. However, as discussed below, we believe that this is not the type of issue for which the staff promulgated its no-response policy. We also believe that, in light of the Commission's recent adoption of Rules 6c-10 and 18f-3 and the proliferation of multiple class pricing structures, it would be extremely useful to the mutual fund industry for the staff to issue guidance with respect to this specific issue.

Discussion

Section 15(a) sets forth certain provisions that must be included in every investment advisory contract with a registered investment company. Section 15(a)(4) states that an investment advisory contract must provide in substance for its automatic termination in the event of its assignment. Assignment is defined in Section 2(a)(4) as "any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor."

Pilgrim America's pledge of all of the outstanding voting securities of the Investment Manager could be deemed a hypothecation of a controlling block of the voting securities of the Investment Manager, and thus could result in an assignment under Section 15(a)(4). Nevertheless, we believe that the proposed transaction should not be deemed an assignment for purposes of Section 15(a)(4). Since pledging the stock of the Investment Manager would not result in any change of actual control or management of the Investment Manager, this pledge would fall squarely within the safe harbor provided by Rule 2a-6 under the 1940 Act. Finally, the proposed pledge would not raise any of the policy concerns that Section 15(a) was designed to address.

1. The Pledge of Stock Should Not Be Deemed An Assignment For Purposes Of Section 15(a)(4)

Rule 2a-6 provides, among other things, that a transaction that does not result in a change of actual control or management of the investment adviser to an investment company is not an assignment for purposes of Section 15(a)(4). Rule 2a-6 was adopted in recognition that, "[f]rom time to time, an investment adviser to an investment company could engage in certain transactions -- particularly modifications of corporate structure -- which may be considered to involve a direct or indirect transfer of a controlling block of voting securities, but which would not affect the actual control or management of the adviser."4 Absent Rule 2a-6, such a transaction might be viewed as an assignment within the meaning of Section 2(a)(4), thereby terminating automatically the investment advisory contract with the investment company.5

We believe that the proposed pledge of the voting securities would not result in any change in actual control or management of the Investment Manager and therefore would fall squarely within the safe harbor of Rule 2a-6. Although Rule 2a-6 primarily was intended to codify staff no-action positions that addressed modifications of corporate structure, the Commission's statement in the proposing release that "an investment adviser ... could engage in certain transactions -- particularly modifications of corporate structure -- ..." indicates that the Commission did not intend that the Rule be limited solely to modifications of corporate structure. Moreover, the Commission's statement in the adopting release that "transferring actual control or management to a receiver would constitute an assignment" indicates that the Commission was concerned that the Rule would be read to include this type of transaction,6 further demonstrating that the Rule was designed to encompass more than modifications of corporate structure.

Further, the pledge would not result in a change of actual control. Under the terms of the Pledge Agreement, the Bank would merely hold the voting securities of the Investment Manager as collateral for the loan and would not have any "control" over the Investment Manager. Control is defined in Section 2(a)(9) of the 1940 Act as "the power to exercise a controlling influence over the management or policies of a company." The most important aspect of determining corporate

control is the ability to elect directors. Since the Bank will have no voting rights with respect to the Investment Manager securities prior to a default and generally will not exercise voting rights after a default without shareholder approval, it would be difficult to regard the Bank as having any control over the Investment Manager.7 Under the Pledge Agreement, Pilgrim America must not exercise or refrain from exercising any voting rights if this action could reasonably be expected to have a material adverse effect on the value of the Investment Manager securities or any material part thereof. This generally is a standard loan documentation provision and does not limit in any meaningful way Pilgrim America's voting rights with respect to the Investment Manager securities, since it is also in the best interests of Pilgrim America not to take any actions that would have a material adverse effect on the value of the Investment Manager securities.

In addition, in the absence of a default, the Bank will have no ability under the Pledge Agreement to exercise any influence over the management or policies of the Investment Manager (and therefore of the Funds). As indicated above, the Commission stated in the adopting release for Rule 2a-6 that transferring actual control or management to a receiver would constitute an assignment.8 Our request is consistent with this apparent attempt by the Commission to define an outer limit to the scope of Rule 2a-6. Here, the transfer of securities to the Bank to collateralize a loan does not provide the Bank with powers that are equivalent to those of a receiver in an insolvency situation. A receiver would have control over the assets and business of a company. In our case, the Bank is not able to exercise control over the assets or business of the Investment Manager, but merely stands ready to protect the Bank's interests in the event of a default by the borrower -- a situation that is well within the outer limit noted by the Commission.

Granting the requested relief also would be consistent generally with the staff's prior positions in this area. On two occasions, the staff has agreed not to recommend enforcement action if shares of stock of an investment adviser were pledged to a lender as collateral in connection with the acquisition of an investment adviser.9 In each of these instances, the party pledging the securities retained all rights vested in the pledged securities as the owner of the shares, except the right to possession of the certificates representing the shares. As in our case, share certificates were transferred to perfect the lender's security interest in the stock.10

In addition, the requested relief is consistent with the policy underlying Section 15(a). The statutory provisions in Sections 15(a) were designed to inhibit "trafficking" in investment advisory contracts.11 As David Schenker, counsel to the Commission's Investment Trust Study, described the purpose of Section 15(a)(4):

Let me discuss [Section 15(a)(4)] at this point .... Here you have a situation where a person assumes a fiduciary obligation; he is the manager of other people's money. If he is through with the job, he ought to go home. However, instead of that they take these 10-year contracts which they have the right to assign to someone else. This provision says that the management contract is personal, that it cannot be assigned, and that you cannot turn over the management of other people's money to someone else.12

Although the term "trafficking" is not defined, the term generally implies selling one's fiduciary office for gain and generally treating an advisory contract as a transferable asset subject to sale. A pledge of voting securities, on the other hand, is not a "sale" for these purposes, since in the ordinary course of business the pledge should not result in any transfer of the investment advisory relationships. Further, the pledge of the Investment Manager securities will not result in turning "over the management of other people's money to someone else," since the Investment Manager will continue to be solely responsible for the management of the Funds.

The type of transaction to which Section 15(a)(4) is directed is the acquisition of an adviser or some or all of its assets, e.g., the transaction pursuant to which the Investment Manager assumed its role as investment manager to each of the Elite Series funds and the closed-end funds in the Pilgrim America Group of Funds (the "Closed-End Funds"). As set forth in Section 1(b)(6) of the 1940 Act, this is the type of transaction that Congress intended Section 15(a)(4) to protect

against: "when control or management [of investment companies] is transferred without the consent of their security holders." We note that the transfer of management of the Elite Series funds and Closed-End Funds, including the entry into the Investment Management Agreements, was approved by shareholders of those Funds at a meeting held on April 4, 1995. Pilgrim America's pledge of the Investment Manager securities is not this type of transaction.

Moreover, requiring that the pledge of the Investment Manager securities be deemed an assignment that terminates the Investment Management Agreements and requires Fund shareholder approval of new agreements would serve no useful purpose. Shareholders of the Elite Series funds and the Closed-End Funds approved the Investment Management Agreements approximately one year ago, and shareholders of each of the Masters Series funds, which are relatively new funds, purchased their shares within the last year. If the Pledge Agreement is deemed an assignment of the Investment Management Agreements, shareholders would be burdened with detailed disclosure in a proxy statement about the credit arrangements of the Investment Manager and its affiliates at a time that such information is not otherwise considered necessary for prospectus disclosure. It also would impose additional expenses upon Fund shareholders in connection with convening a shareholder meeting and soliciting proxies. The purposes of Section 15(a) would be more directly addressed by treating the foreclosure by a pledgee on the securities of an investment adviser, or the exercise by a pledgee of voting rights with respect to such securities, as the event that triggers a prohibited assignment under Section 15(a).

We believe, therefore, that the proposed pledge arrangement would not involve any of the abuses that Congress was concerned with in prohibiting assignments of investment advisory contracts.

2. The Request Is Sufficiently Novel and Potentially Beneficial to Warrant a Staff Response

The staff has stated that, as a matter of policy, it will no longer respond to routine no-action or interpretive requests regarding the application of Rule 2a-6 (and Rule 202(a)(1)-1 under the Investment Advisers Act of 1940, the corollary to Rule 2a-6) to a particular transaction.13 The staff promulgated this no-response policy because it did not want to be in a position of having to second guess the significance of a change in control or management in internal corporate reorganizations.14 Determining whether a change of actual control or management has occurred in these transactions is a factual inquiry that is difficult to address in the context of a no-action letter.15 In addition, the Commission and the staff understandably are not in a position to make the investigation necessary to ascertain, verify, or evaluate the requisite factual information regarding these corporate reorganization transactions.16

This, however, is a discrete issue that does not turn on the application of a detailed set of facts. Thus, we believe that this issue lends itself well to resolution in the no-action letter context. In that regard, we note that in adopting Rule 202(a)(1)-1, the corollary under the Investment Advisers Act to Rule 2a-6, the Commission stated that, even though the staff ordinarily will not express any opinion in response to inquiries as to whether a specific transaction would come within that Rule, "the staff will, of course, provide interpretive advice as to the general applicability of [Rule 202(a)(1)-1]."17 We believe the issue presented here goes to important policy issues respecting the general applicability of Rule 2a-6.18

Further, in light of the Commission's recent adoption of Rules 6c-10 and 18f-3,19 and the proliferation of multiple class pricing structures, it would be extremely useful to the fund industry if the staff issued a determination as to whether the pledge of all or a large block of an investment adviser's voting securities in connection with the financing of multiple class distribution arrangements would amount to an assignment for purposes of Sections 15(a)(4). Although the staff has issued two favorable no-action letters addressing the pledge of an investment adviser's securities in connection with an acquisition, it is not obvious that these positions also would apply to the financing of multiple class distribution arrangements. Finally, a favorable response to this

request could pave the way for innovations in financing the sale of shares of mutual funds, and provide a simpler and less costly structure for financing the sale of mutual fund shares than arrangements that have been used to date.

Conclusion

We believe that the requested relief falls squarely within the language of Rule 2a-6, is consistent generally with the staff's prior no-action positions, and does not raise any of the policy concerns that Section 15(a) is designed to address. Further, we believe this issue is sufficiently novel, non-fact intensive and potentially beneficial to warrant review and consideration by the staff.

Therefore, we seek assurance that the staff of the Division of Investment Management would not recommend enforcement action to the Commission under Section 15(a) if Pilgrim America pledges all of the outstanding voting securities of the Investment Manager under the circumstances described above in connection with entering into the Credit Agreement.

In accordance with Securities Act Rel. No. 6269 (Dec. 5, 1980), we have enclosed seven copies of this no-action request. Please contact the undersigned at (202) 626-3358 or Karen L. Anderberg at (202) 626-3384 if you have any questions or comments on this matter.

Sincerely yours,

Jeffrey S. Puretz
DECHERT PRICE & RHOADS
1500 K STREET, N.W.
WASHINGTON, DC 20005-1208
TELEPHONE: (202) 626-3300

Footnotes

1 The open-end Funds currently consist of Pilgrim America MagnaCap Fund, Pilgrim America High Yield Fund, Pilgrim Government Securities Income Fund, Inc., Pilgrim America Masters Asia-Pacific Equity Fund, Pilgrim America Masters MidCap Value Fund, and Pilgrim America Masters LargeCap Value Fund (collectively referred to as the "Open-End Funds"). Pilgrim America High Yield Fund and Pilgrim America MagnaCap Fund are each series of Pilgrim America Investment Funds, Inc., and Pilgrim America Masters Asia-Pacific Equity Fund, Pilgrim America Masters MidCap Value Fund, and Pilgrim America Masters LargeCap Value Fund are each series of Pilgrim America Masters Series, Inc. The closed-end investment companies in the Pilgrim America Group of Funds are Pilgrim America Prime Rate Trust and Pilgrim America Bank and Thrift Fund, Inc. (collectively referred to as the "Closed-End Funds").

2 Under the Open-end Funds' multi-class pricing systems, three classes of shares are offered. Class A shares are sold with a front-end sales charge; Class B shares are sold subject to a contingent deferred sales charge; and Class M shares are sold with a front-end sales charge that is less than that imposed on Class A shares.

3 In that regard, the Bank and Pilgrim America also have entered into a related security agreement.

4 Investment Company Act Rel. No. 10809 (Aug. 6, 1979) (proposing Rule 2a-6).

5 Id.

6 Investment Company Act Rel. No. 11005 (Jan. 2, 1980) at n. 1.

7 The presumption of control found in Section 2(a)(9) supports this view. Under Section 2(a)(9), a person generally is presumed to control a company if that person owns beneficially more than 25% of the voting securities of the company. Voting security generally is defined in Section 2(a)(42) of the 1940 Act as a security that provides the right to vote for the election of directors. Thus, as Congress recognized, even significant share ownership is not sufficient to presume the existence of control unless the shares carry the right to vote for the election of directors. Furthermore, the presumption of control results from the "ownership" of voting securities. A secured party under Article 9 of the Uniform Commercial Code does not own collateral pledged to it, but has the right to dispose of the debtor's ownership interest in that collateral to satisfy the secured obligations. See Unif. Comm. Code § 9-101 official comment, 3 U.L.A. 61 (1992); see Unif. Comm. Code § 9-501(1), 3B U.L.A. 10 (1992). The right to dispose of the collateral becomes effective upon default, not upon the pledge of the security. See Unif. Comm. Code § 9-501(1), 3B U.L.A. 10 (1992).

8 See note 7 and accompanying text, above. In one instance, however, the staff agreed not to recommend enforcement action to the Commission if certain investment advisers and/or principal underwriters continued to perform under their respective agreements without further interes-tholder vote even though the parent company of the investment advisers and principal underwriters was subject to a state insurance commissioner rehabilitation order, the functional equivalent of being placed in receivership. Mutual Benefit Fund et al. (pub. avail. Aug. 23, 1991) ("Mutual Benefit"). The rehabilitation order granted the commissioner "immediate exclusive possession and control of, and title to, the business and all of the assets, contracts, causes of action, books, records, bank accounts, certificates of deposit, funds, securities or other funds and all real or personal property of any nature of Mutual Benefit."

9 Funds, Inc. (pub. avail. Aug. 12, 1976); Wall Street Management Corp. (pub. avail. Sep. 7, 1974).

10 In each of these letters, the parties stated that shareholder approval of new investment advisory agreements would be sought in connection with the acquisition of the investment adviser, and that the pledge would be disclosed in the proxy statements on this vote. However, it is clear that the pledge itself was not treated as an event giving rise to termination of advisory agreements, and only the acquisition of the advisers was so treated. Further, these letters were issued prior to the adoption of Rule 2a-6, and here, we believe that the pledge falls within the provisions of that Rule. In contrast, foreclosure under the Pledge Agreement would result in a change of actual control and management, and would result in an assignment. It should be noted that at the time of the approval of the Investment Management Agreement for the Masters Series, negotiations with the bank were well underway, and the sole shareholder of the Series, the Investment Manager, was fully informed about the terms of the Credit Agreement and the Pledge Agreement.

11 See Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (statement of David Schenker, Chief Counsel, Investment Trust Study).

12 Id. That theme was echoed by the General Counsel of the Commission, in an opinion rendered shortly after the passage of the 1940 Act:

> The legislative history of Section 15 manifests a clear Congressional intention to prevent all trafficking in investment advisory contracts and to prevent an investment adviser from transferring his fiduciary obligations by turning over the management of the stockholders' money to a different person. That intention is effectuated by the requirement in Section 15(a) that every investment advisory contract made after March 15, 1940 must provide for its automatic termination upon assignment...

See Investment Company Act Rel. No. 354 (1942).

13 Nikko International Capital Management Company (pub. avail. June 1, 1987).

14 See, e.g., Nikko International Capital Management Company (pub. avail. June 1, 1987); Templeton Investment Counsel Ltd. (pub. avail. Jan. 22, 1986); Spears, Benzak, Salomon & Farrell, Inc. (pub. avail. Jan. 21, 1986); Scudder, Stevens & Clark (pub. avail. March 18, 1985); and Heine Securities Corporation (pub. avail. Feb. 25, 1985).

15 Nikko International Capital Management Company (pub. avail. June 1, 1987).

16 Investment Advisers Act Rel. No. 1013 (Feb. 20, 1986) (proposing Rule 202(a)(1)-1).

17 Investment Advisers Act Rel. No. 1034 (Sep. 9, 1986).

18 We note that the staff has issued several no-action letters in this area since it adopted its non-response policy. See, e.g., Mutual Benefit; Dean Witter, Discover & Co. (pub. avail. Feb. 8, 1993).

19 Investment Company Act Rel. Nos. 20915 (Rule 18f-3) and 20916 (Rule 6c-10) (Feb. 24, 1995). Collectively, these Rules permit open-end investment companies to implement multiple class pricing systems without the need for each company to obtain individual exemptive relief.