

K & LOCKHART 000008

FLOOR  
STREET, N.W.  
WASHINGTON, D.C. 20036-5891

EXCHANGE PLACE  
53 STATE STREET  
BOSTON, MA 02109  
(617) 227-6000

TELEPHONE (202) 778-9000  
TELEX 440209 KL DC UT  
TELECOPIER (202) 778-9100

1428 BRICKELL AVENUE  
MIAMI, FL 33131  
(305) 374-8112  
1500 OLIVER BUILDING  
PITTSBURGH, PA 15222-5379  
(412) 355-6500

WRITER'S DIRECT DIAL NUMBER  
(202) 778-9126

1940 Act, Section 8(b)

August 28, 1987

W. Randolph Thompson, Esq.  
Chief, Office of Insurance Products  
and Legal Compliance  
Division of Investment Management  
Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

RECEIVED  
Division of Investment Management

AUG 28 1987

Re: PaineWebber Series Trust

PUBLIC AVAILABILITY DATE: 12-14-87  
ACT SECTION RULE  
1940C 8(b)(1) ---

Dear Mr. Thompson:

We are writing on behalf of our client, PaineWebber Series Trust ("Trust"), to request that the Staff concur in our interpretation that the term "registrant" as used in Section 8(b)(1)(A) of the Investment Company Act of 1940 ("1940 Act") with respect to the requirement that a registrant recite its policy concerning its diversified or non-diversified status refers to each separate series of a series investment company. Alternatively, we request that the Staff advise us that it will not object if the Trust, which currently is described in its registration statement as a "diversified" investment company with six series ("Portfolios"), amends its registration statement to (1) add a non-diversified Portfolio, (2) specifically identify the six existing Portfolios as diversified, and (3) delete all references to the Trust itself as a "diversified" investment company.

I. Facts

The Trust is organized as a Massachusetts business trust and is an open-end management investment company registered under the 1940 Act. Shares of the Trust's six current Portfolios are offered only to insurance company separate accounts which fund certain variable contracts.<sup>1/</sup> The Trust's board of trustees may

<sup>1/</sup> Such shares presently are offered to the American Republic Variable Annuity Account ("Separate Account") which is registered with the Securities and Exchange Commission as a unit investment (footnote continued)

KIRKPATRICK &amp; LOCKHART

W. Randolph Thompson, Esq.  
August 28, 1987  
Page 2

establish additional Portfolios in the future. Each of the Trust's Portfolios consists of a separate class of shares which represents interests in a segregated portfolio of securities managed in accordance with the investment objectives and policies applicable to that Portfolio. Assets belonging to a particular Portfolio are held in trust for the benefit of the shareholders of that Portfolio and any liabilities or expenses incurred by a particular Portfolio are payable solely out of its assets. The Trust itself has no investments or assets apart from those of its Portfolios.

The Trust is currently described in its registration statement as a "diversified" investment company with six Portfolios. The Trust proposes to establish an additional, non-diversified Portfolio by filing a post-effective amendment to its registration statement to (1) add the proposed non-diversified Portfolio and disclose the additional risks associated with its non-diversified status, (2) disclose the diversified status of each of the six current Portfolios of the Trust, and (3) delete all references to the status of the Trust itself as a diversified company.

## II. Discussion

Section 8(b)(1) of the 1940 Act provides that every registered investment company shall file a registration statement with the Securities and Exchange Commission ("Commission") that contains

a recital of the policy of the registrant in respect of each of the following types of activities . . . (A) the classification and subclassification, as defined in sections 4 and 5, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group

---

(footnote continued from previous page)  
trust under the 1940 Act. The Separate Account has six divisions which correspond to the six Portfolios of the Trust. The existing Portfolios are the Growth Portfolio, the Growth and Income Portfolio, the High Yield Bond Portfolio, the Corporate Bond Portfolio, the Global Growth Portfolio and the Money Market Portfolio.

W. Randolph Thompson, Esq.  
August 28, 1987  
Page 3

of industries; (F) the purchase or sale of real estate and commodities, or either of them; (G) making loans to other persons; and (H) portfolio turnover . . . (emphasis added).

The "classification" of a registrant as that term is used in Section 8(b)(1)(A) refers to the status of an investment company as a "face amount certificate company," "unit investment trust" or "management company" as defined in Section 4 of the 1940 Act. Section 5(a) of that Act further classifies management companies as "open-end" or "closed-end" and Section 5(b) also classifies management companies as "diversified" or "non-diversified." The term "diversified company" as used in Section 5(b) means a management company which has at least 75% of the value of its total assets

represented by cash and cash items, Government securities, securities of other investment companies and other securities . . . limited in respect of any one issuer to an amount not greater in value than 5 percentum of the value of the total assets of such management company and to not more than 10 percentum of the outstanding voting securities of such issuer.

A "non-diversified" company is any management company other than a diversified company. Thus, the terms "diversified" and "non-diversified" refer exclusively to the manner in which an investment company's assets are allocated among various investments - specifically, the extent to which a management company will invest its assets in a single issuer.

A series investment company such as the Trust is defined in Rule 18f-2 of the Act as an open-end investment company which issues two or more classes of stock, each of which is preferred over all other classes with respect to assets specifically allocated to that class. A series company in certain respects is treated as a single investment company and in other respects is treated as multiple investment companies. Each series company constitutes a single legal entity and registers as a single investment company; however, each class of stock issued by such series company represents a different group of shareholders with an interest in a segregated portfolio of assets.<sup>2/</sup> As a prac-

<sup>2/</sup> See Investment Company Act Release No. 4276 (1972) adopting Rule 18f-2.

## KIRKPATRICK &amp; LOCKHART

W. Randolph Thompson, Esq.  
August 28, 1987  
Page 4

tical matter, insofar as the makeup and management of its assets is concerned, a series company is merely an umbrella or shell. All its assets are allocated to specific portfolios and each portfolio's assets are managed as if it were a separate investment company; the series company itself has no separately managed assets of its own.<sup>3/</sup>

The status of each portfolio of a series company as a separate investment company with respect to matters concerning the management of its assets is recognized in Rules 17a-7 and 18f-2 under the 1940 Act. Rule 17a-7 exempts certain purchase and sale transactions between "registered investment companies or separate series of registered investment companies which are affiliated persons . . . of each other," provided *inter alia*, that the transaction is consistent with the policy of each affected series. Subparagraphs (c) and (d) of Rule 18f-2 provide that the shareholder approval required by the 1940 Act with respect to investment advisory contracts and changes in investment policies is obtained for a separate portfolio if the contract or change is approved by a majority of the outstanding voting securities of that portfolio, notwithstanding that the matter may not have been approved with respect to another portfolio or the investment company as a whole.

When a series company identifies itself in its registration statement as a diversified or non-diversified company and makes no separate statement concerning its portfolios, it impliedly represents that all its portfolios are operated as diversified or non-diversified companies. However, no investor can be harmed by the addition of a non-diversified portfolio to a series company that has previously had solely diversified portfolios or vice versa. The addition effects no change whatsoever in the investment objectives and policies and the attendant risks of the portfolio(s) in which current shareholders have invested. Prospective investors will not be misled if the series company's registration statement is revised to identify the separate portfolios as diversified or non-diversified and to delete all references to the series company itself as diversified.

<sup>3/</sup> In this context, we note that Congress, in the Tax Reform Act of 1986, amended Subchapter M of the Internal Revenue Code to provide that each separate portfolio of a regulated investment company be treated as a separate corporation for federal income tax purposes. Thus, the diversification requirements of Subchapter M apply to each separate portfolio of a series company and not to the series company as a whole.

## KIRKPATRICK &amp; LOCKHART

W. Randolph Thompson, Esq.  
August 28, 1987  
Page 5

For the above reasons it is our opinion that Section 8(b)(1)(A) does not require that a series company identify itself as "diversified" or "non-diversified" in its registration statement, but rather requires that the series company clearly disclose the diversified or non-diversified status of each portfolio.

This interpretation of Section 8(b)(1)(A) with respect to a series investment company is also consistent with the practice followed by numerous series companies with respect to other asset management policies which are required to be recited in the registration statement by subsections (B) through (H) of Section 8(b)(1). For example, Subsection (E) requires disclosure of the "registrant's" policy with respect to concentrating investments in a particular industry or group of industries. We submit that this subsection has never been interpreted to require that the series company itself have one specific concentration policy applicable to all its portfolios. To the contrary, many series companies do in fact state different concentration policies for different portfolios and the same series company may disclose a policy of no concentration for one or more portfolios and at the same time disclose a policy of concentration in one or more different industries for each of several other portfolios. Similarly, while Subsection (F) requires disclosure concerning the purchase and sale of real estate and commodities, the various portfolios in a series company may have very different policies in this regard. For example, portfolios which invest in foreign-currency denominated securities may be authorized to purchase and sell foreign currency futures contracts while other portfolios in the same series company that do not have foreign investments may not have such authorization.

### III. Conclusion

For the foregoing reasons, we request that the Staff either concur in our opinion that "registrant" as used in Section 8(b)(1)(A) of the 1940 Act with respect to diversified or non-diversified status refers to each separate series of a series investment company or, alternatively, advise that it will not object if the Trust amends its registration statement to (1) add a non-diversified Portfolio, (2) specifically identify the existing Portfolios of the Trust as diversified, and (3) delete all references to the Trust itself as a diversified management company.

000013

KIRKPATRICK & LOCKHART

W. Randolph Thompson, Esq.  
August 28, 1987  
Page 6

If you have any questions concerning this request, please contact Elinor Gammon of this firm at 202-778-9090 or the undersigned at 202-773-9126.

Very truly yours,

*Elizabeth K. Norsworthy*  
Elizabeth K. Norsworthy

EKN/mas

000014

KIRKPATRICK & LOCKHART

SOUTH LOBBY - 9TH FLOOR  
1800 M STREET, N.W.  
WASHINGTON, D.C. 20036-5891

EXCHANGE PLACE  
53 STATE STREET  
BOSTON, MA 02109  
(617) 227-6000

1428 BRICKELL AVENUE  
MIAMI, FL 33131  
(305) 374-8112

1500 OLIVER BUILDING  
PITTSBURGH, PA 15222-5379  
(412) 355-6500

TELEPHONE (202) 778-5000  
TELEX 440209 KL DC UT  
TELECOPIER (202) 778-9100

WRITER'S DIRECT DIAL NUMBER  
(202) 778-9126

November 10, 1987

BY MESSENGER

Heidi Stamm, Esq.  
Office of Insurance Products  
Division of Investment Management  
Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

Re: PaineWebber Series Trust ("Fund")  
(File No. 33-10438)

Dear Ms. Stamm:

As you requested, I am writing this letter to explain the factual context which caused us to request interpretive advice on behalf of the Fund on August 28, 1987. In that letter, we requested that the staff concur in our interpretation that the term "registrant" as used in Section 8(b)(1)(A) of the Investment Company Act of 1940 ("1940 Act") with respect to the requirement that a registrant recite its policy concerning its diversified or non-diversified status refers to each separate series of a series investment company. Alternatively, we requested that the staff advise us that it will not object if the Fund, which currently is described in its registration statement as a "diversified" investment company with six series ("Portfolios"), amends its registration statement to (1) add a non-diversified Portfolio, (2) specifically identify the six existing Portfolios as diversified, and (3) delete all references to the Fund itself as a "diversified" investment company. As explained in the letter, the Fund offers the shares of its Portfolios only to variable annuity and variable life insurance company separate accounts. The registration statement of the Fund was declared effective on April 1, 1987 and was amended to include the Fund's first semi-annual financial statements by Post-Effective Amendment No. 1 effective September 30, 1987.

At the present time, the Fund has six portfolios - the Money Market, Growth, Global Growth, Growth and Income, Corporate Bond and High Yield Bond Portfolios. These Portfolios have

## KIRKPATRICK &amp; LOCKHART

Heidi Stamm, Esq.  
November 10, 1987  
Page 2

essentially the same investment objectives, policies and limitations as certain PaineWebber mutual funds that are sold to the general public, and are managed by PaineWebber Incorporated ("PaineWebber"), the Fund's investment adviser, and Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins"), the sub-adviser, in essentially the same manner. Specifically, the Money Market Portfolio of PaineWebber RMA Money Fund, Inc. serves as the model for the Fund's Money Market Portfolio, PaineWebber Olympus Fund is the model for the Growth Portfolio, PaineWebber Atlas Fund for the Global Growth Portfolio, PaineWebber America Fund for the Growth and Income Portfolio, the Investment Grade Bond Portfolio of PaineWebber Fixed Income Portfolios for the Corporate Bond Portfolio and the High Yield Bond Portfolio of PaineWebber Fixed Income Portfolios for the High Yield Bond Portfolio. As is the case of the model funds, each of the Fund's present Portfolios is managed as a diversified investment company, i.e. with respect to 75% of the Portfolio's total assets, no more than 5% of those assets are invested in any one issuer and the Portfolio does not hold more than 10% of the outstanding voting securities of that issuer.

On October 2, 1987, the Fund filed Post-Effective Amendment No. 2 to its Registration Statement pursuant to Rule 485(a). The Fund requested that this Post-Effective Amendment be declared effective on December 21, 1987, pursuant to that Rule. The purpose of Post-Effective Amendment No. 2 is to add a seventh portfolio--the Energy-Utility Portfolio--which is modelled on PaineWebber Master Energy-Utility Fund, a series of PaineWebber Investment Series (File No. 33-11025).<sup>1/</sup> As is the case of the model fund, the Energy-Utility Portfolio would be managed as a diversified investment company.

Since early summer, PaineWebber has contemplated adding an eighth portfolio, called the Global Income Portfolio, and modelled on PaineWebber Master Global Income Fund, another series of PaineWebber Investment Series.<sup>2/</sup> As in the case of the model fund, the primary investment objective of the Global Income

<sup>1/</sup> The model fund commenced offering shares to the public on September 18, 1987, the date when Post-Effective Amendment No. 1 to the Registration Statement of PaineWebber Investment Series became effective pursuant to Rule 485(a).

<sup>2/</sup> PaineWebber Master Global Income Fund, the first series of PaineWebber Investment Series, commenced operations on March 20, 1987, the date when the Registration Statement of PaineWebber Investment Series was declared effective.



KIRKPATRICK & LOCKHART

000016

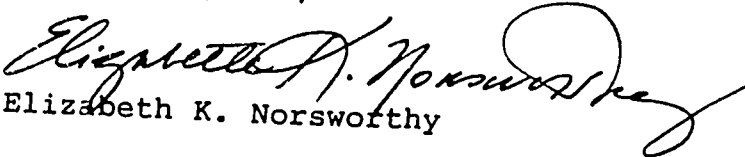
Heidi Stamm, Esq.  
November 10, 1987  
Page 3

Portfolio would be "to achieve a high level of current income consistent with what Mitchell Hutchins considers to be prudent investment risk" by investing principally in "high quality debt securities issued by foreign governments, foreign and U.S. companies, or issued or guaranteed by the U.S. government, its agencies or instrumentalities." Also, as in the case of the model fund, the Portfolio would be managed as a non-diversified investment company to give its portfolio manager sufficient flexibility when investing in high quality debt securities issued by foreign governments. Such flexibility is deemed necessary, given the fact that all securities issued or guaranteed by a particular foreign government are considered securities of one issuer for purposes of the diversification requirements of the 1940 Act.

The next Post-Effective Amendment which the Fund intends to file would reflect the addition of the Global Income Portfolio, specifically identify the six existing Portfolios and the Energy-Utility Portfolio as diversified, and delete all references to the Fund itself as a "diversified" investment company.<sup>3/</sup>

Please let me know if you have any further questions.

Sincerely yours,

  
Elizabeth K. Norsworthy

cc: Dianne E. O'Donnell, Esq.  
Elinor W. Gammon, Esq.

<sup>3/</sup> References to the Fund as a diversified investment company were also deleted from the Prospectus and Statement of Additional Information included in Post-Effective Amendment No. 2.

**PUBLIC**

000017

**RESPONSE OF THE OFFICE OF  
INSURANCE PRODUCTS AND LEGAL COMPLIANCE  
DIVISION OF INVESTMENT MANAGEMENT**

Our Ref. No. IP-15-87  
PaineWebber Series  
Trust

Based on the facts and representations in your letter of August 28, 1987, and in your supplementary letter dated November 10, 1987, the Division will not object if the PaineWebber Series Trust (the "Trust") amends its registration statement to add a non-diversified portfolio. Our position is conditioned upon the Trust's compliance with certain disclosure requirements outlined below. Without necessarily agreeing with your legal analysis, we interpret the Investment Company Act of 1940 (the "Act") to permit the registration of a series company which includes both diversified and non-diversified portfolios. However, each series of a series investment company must provide the disclosure required by Section 8(b)(1)(A) of the Act.

The application of certain provisions of the Act to series investment companies is frequently unclear because series companies were not contemplated by Congress prior to passage of the Act. In general, a series company may be treated as one investment company under some provisions of the Act while other provisions of the Act might logically require each individual series to be treated as an independent investment company. Whether a series company should be considered as one or as several investment companies depends on the purpose of the particular statutory provision involved.

Section 8(b)(1)(A) of the Act requires an investment company to state in its registration statement whether it is diversified or non-diversified. As a result, that section is generally thought to require a company to adopt one position on diversification and identify itself with the appropriate label. The legislative history of the Act shows that Section 8(b) is concerned with adequate disclosure of fundamental policies and investment objectives, rather than merely labeling a company as diversified or non-diversified. Section 8(b) was designed "to apprise the prospective purchaser of the investment company's security of [sic] the nature of its activities." <sup>1/</sup>

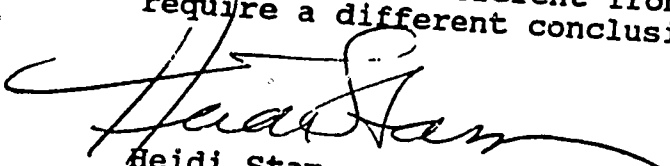
---

<sup>1/</sup> Investment Trusts and Investment Companies: Hearings on S.3580 before the Senate Subcomm. on Banking and Currency, 76th Cong., 3d Sess., Part I, 188 (1940) (statement of Mr. Schenker of the Securities and Exchange Commission). Mr. Schenker's testimony also referred to the requirements of Sections 5 (classification of investment companies), 8(b)(1) (contents of registration statement) and 13 (changes in investment policy) as "integrally interrelated" so as to meet the "problem of disclosure to shareholders." Id.

To enable investors in a series company to make an informed investment decision, the prospectus must adequately explain the policies and investment objectives of each series. Whether the series company as a whole can be labeled diversified or non-diversified is relatively unimportant once the investor is apprised of the diversification status and attendant risks of each of the series. Accordingly, those disclosure requirements of Section 8(b) which relate to the unique policies and investment objectives of a particular series should apply separately to each series of a series investment company. 2/

Given the legislative intent of the Act, the goal of providing investors with full and fair disclosure of fundamental policies and investment objectives, and the structure of series companies, the Act should not be interpreted to require that a series company with both diversified and non-diversified portfolios label itself as either diversified or non-diversified. Since full disclosure of the classification of each series would serve the purposes of the Act, the staff would not object if the Trust amends its registration statement to add a non-diversified portfolio if, in that registration statement, the Trust (1) specifically identifies the existing portfolios as diversified, (2) specifically identifies the new portfolio as non-diversified, (3) fully discloses the investment risks associated with a non-diversified portfolio, and (4) deletes all reference to the Trust itself as a "diversified" investment company.

This response is limited to the facts and circumstances represented in your letter. Accordingly, please note that facts or conditions different from those presented in your letter might require a different conclusion.



Heidi Stam  
Attorney

November 12, 1987

---

2/ Rule 18f-2 under the Act indicates that it is consistent with the intent and purpose of the Act for individual series to act separately on matters in which they have differing interests. See also Item 4(a)(1)(B) of Form N1-A which requires a description of each portfolio of a series company and the policies each proposes to follow in order to meet its investment objectives.