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[redacted] 3/3/09

FACT STATEMENT RELATING TO:

(1) Definition of "Entity"

(2) Beneficial Ownership

Introduction

We submit this statement on behalf of an investment management company (the "Fund"), a so-called "sovereign wealth fund," that is wholly-owned by the government of a foreign sovereign nation (the "Sovereign") and whose sole mandate since its inception has been to manage the foreign reserves of its Sovereign. The term "sovereign wealth fund" ("SWF") is a catch-all term popularly used to describe the myriad financial advisory firms that manage a sovereign nation's investment portfolio. Arrayed along a spectrum, SWFs range from purely autonomous financial management companies to ones that are part of the government itself.

Two issues are raised here. First, is the Fund an "entity" within the meaning of the Hart-Scott-Rodino ("HSR") Act and regulations? If the Fund is not an "entity" as defined by 15 C.F.R. § 801.1(a)(2), it follows that the Fund also can be neither a "person" nor an "acquiring person," respectively, under §§ 801.1(a)(1) and 801.2(a). The HSR definition of "entity" provides "[t]hat the term 'entity' shall not include any foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce)...." Section 801.1(a)(2). It is, therefore, a mixed question of law and fact as to whether any given SWF is a "foreign agency (other than a corporation engaged in commerce)."

Second, is the Fund or is the Sovereign and its Monetary Authority, on whose behalves the Fund manages investments, the beneficial owner(s) of the voting securities at issue? Assuming the Sovereign and its Monetary Authority are the beneficial owners of the voting securities for HSR purposes, their acquisition of such securities would appear clearly to be an acquisition by a foreign state, a foreign government or a foreign governmental agency other than a corporation engaged in commerce and, as such, not an HSR "entity."

The Transaction

In connection with a major capital-enhancing exercise that involves significant US government support, a leading U.S. bank holding company (the "BHC") has asked the Fund to exchange its current interest in non-cumulative fixed-rate convertible preferred stock of the BHC for common stock of the BHC (the "Transaction"). As a result of the Transaction, the Fund will hold no more than 19.9 percent of the BHC's outstanding voting securities.

The Fund

The Fund is enshrined in the Sovereign's Constitution as a "Government company." That Constitution imposes numerous public obligations on a class of Government companies that

are identified individually in "Part II" of "Schedule V" to the Constitution. Schedule V is entitled "Key Statutory Boards [Part I] and Government Companies [Part II]." Part II of that schedule identifies only three Constitutionally sanctioned Government companies, the first of which is identified by name as [the Fund]. Accordingly, while the Fund was incorporated as a private company under the Sovereign's Companies Act, it is Constitutionally treated as a special category Government company.

The Fund's sole and express legal mandate is to manage the foreign reserves of the Sovereign. The investment objective is to enhance the global purchasing power of these reserves by achieving a reasonable rate of return above global inflation, within acceptable risk limits. The Fund is wholly-owned by the Sovereign. The Sovereign and the Sovereign's Monetary Authority are the Fund's only clients, and they own all the assets under the Fund's management. While the Fund earns a fee for its services, all investment income is either paid out to the Sovereign and its Monetary authority or reinvested, and, either way, remains the property of the Sovereign and its Monetary Authority. The assets under the Fund's management belong not to the Fund but to the Sovereign and its Monetary Authority.

The Fund's founding and still current Chairman of the Board is the Sovereign's former Prime Minister, who served dually in his capacities as Prime Minister and Chairman of the Fund. The two current Deputy Chairmen of the Fund are, respectively, the Sovereign's current Prime Minister and former Deputy Prime Minister. Three additional ministers of the Sovereign sit on the Fund's board, in addition to a number of outside directors who were added to the board for their expertise.

As a Government company under the Sovereign's constitution:

- Appointment and removal of Directors and the Group Managing Director of the Fund requires the assent of the Sovereign's elected President;
- The Fund's financial statements and proposed budget must be approved by the Sovereign's elected President; and
- The President is entitled, at his request, to receive any information that is available to the Fund's Directors.

The Fund and certain of its subsidiaries are audited by the Sovereign's Auditor-General, whose primary duty under the Constitution is to audit and report on the accounts of all the departments and offices of the Government, the Public Service Commission, the Legal Service Commission, the Education Service Commission, the Police and Civil Defense Services Commission, the Supreme Court, all subordinate courts and Parliament.

Beneficial Ownership

Even assuming that the Fund is considered an entity for HSR purposes, there is a question about who will "hold" the BHC's voting securities for HSR purposes as a result of the acquisition. Although the Fund may have record title to the voting securities, that fact is not

outcome determinative to the question of who "holds" the securities for HSR purposes. The determination of who "holds" securities turns on the factual determination of who beneficially owns them. *See* § 801.1(c). In this case, the entirety of the investment assets managed by the Fund belong to the Sovereign and its Monetary Authority. Ultimately, it is the Sovereign and the Monetary Authority who bear the risk of loss or gain with respect to these assets.

Voting decisions on securities under the Fund's management are generally made by the Fund in the ordinary course of business, as is the case, for example, with most other funds. But, unlike the situation with most fund clients, the Sovereign and the Monetary Authority are entities with the ultimate right to direct the voting of securities under the Fund's management.

The practice of the Fund, the Sovereign and the Monetary Authority in making SEC Schedule 13G filings (for passive investments of more than 5% of an issuer's voting securities acquired by the Fund) is also consistent with the conclusion that the Sovereign and the Monetary Authority are the beneficial owners of the shares here. In those instances where the Fund makes Schedule 13G filings, the Fund makes the filings with itself, the Sovereign and the Monetary Authority as the reporting persons and allocates the beneficial ownership of the securities (the power to vote and dispose of the securities) between the Sovereign and itself on the one hand and the Monetary Authority and itself on the other.

Authority

1. Definition of "Entity." We are unaware of any authority construing the terms "foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce)" within the definition of "entity." The closest analogy we have located is the PNO informal interpretation 0711008, construing the term "agency" of a State for purposes of the same definition. *See* http://www.ftc.gov/opinions/0711008.htm.

2. Beneficial Ownership. *See* Illustrative Example to § 801.1(c): "If a stockbroker has stock in 'street name' for the account of a natural person, only the natural person (who has beneficial ownership) and not the stockbroker (which may have the record title) 'holds that stock."

We look forward to discussing these issues with you.

AGREE FUND IS NOT AN ENTITY FOR HSR PURPOSES.

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3/4/09

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