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SECTION 7(b)
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PUBLIC
AVAILABILITY 2/26/97

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 97-49-CC
I.C.H. Corporation
File No. 132-3

On the basis of the facts and representations in your letter of February 14, 1997, we would not recommend enforcement action to the Commission if I.C.H. Corporation ("ICH") creates a liquidating trust (the "Trust") pursuant to ICH's plan of reorganization in bankruptcy (the "Plan") without registering the Trust under the Investment Company Act of 1940 (the "Investment Company Act"), in reliance on the exception in section 7(b) for "transactions which are merely incidental to the dissolution of an investment company." This position is based particularly on your representations that the Trust: (1) will exist solely to liquidate its assets and distribute the proceeds; (2) will not hold itself out as an investment company, but rather as a trust in the process of liquidation; (3) will not conduct a trade or business and will be limited to making temporary investments in short-term government securities, certain time deposits, certificates of deposit, bankers' acceptances, commercial paper, and money market funds; and (4) will terminate on the earlier of: (i) the date on which all of the Trust assets have been liquidated and the proceeds distributed to holders of interests in the Trust, or (ii) three years after the effective date of the Plan, unless the bankruptcy court having jurisdiction over the Plan permits the Trust to continue in existence for an additional period determined to be necessary for the Trust to complete the distribution of its assets.

Although interests in the Trust will be transferable, you represent that it is unlikely that an active trading market in the interests will develop; interests in the Trust will not be listed on any national securities exchange or quoted on the Nasdaq Stock Market; and neither the trustees nor the Trust will take steps designed to facilitate the development of a secondary market in the interests, including placing advertisements, distributing marketing materials, or collecting or publishing information regarding prices at which the interests may be transferred.

Certain prior no-action letters involving liquidating trusts have included a representation that interests in the liquidating trust would not be transferable,¹ while other letters have represented that interests would be transferable, subject to

¹ See, e.g., Oppenheimer Landmark Properties (pub. avail. Mar. 9, 1993); Celina Financial Corporation (pub. avail. Feb. 19, 1993).

strict limitations.² We therefore take this opportunity to clarify our position regarding the transferability of interests in a liquidating trust.

The transferability of liquidating trust interests may be relevant to, but is not necessarily determinative of, the trust's ability to rely on section 7. The exceptions in paragraphs (a) and (b) of section 7 for transactions incidental to the dissolution of an investment company make no reference to the transferability of interests in the investment company. The transferability of liquidating trust interests is relevant under section 7, therefore, only to the extent that transferability may suggest that the trust is engaging in transactions other than those "merely incidental to the dissolution of an investment company." In those situations, it would be necessary to consider all of the facts and circumstances to determine whether the trust may rely on the section 7 exception.³

Our position is based on the facts and representations in your letter. Any different facts or representations may require a different conclusion.⁴ The Division of Investment Management, on a number of occasions, has expressed its views with respect to the circumstances under which transactions of an investment

² These limitations generally have included representations that the interests in the liquidating trust would not be listed on an exchange, the trust and trustees would not facilitate trading in interests of the trust, an active trading market in the interests was unlikely to develop, and the trust would comply with the registration and reporting requirements of the Exchange Act. See Integrated Resources (pub. avail. Aug. 5, 1994); MPC Liquidating Trust (pub. avail. Mar. 10, 1994).

³ For example, we would question whether a liquidating trust was engaging in transactions incidental to its dissolution if an active trading market for the liquidating trust's interests were to develop, or if the trust or trustees were to take some action to facilitate trading. In the context of a bankruptcy reorganization, transferability of liquidating trust interests may be consistent with dissolution and liquidation of the trust assets if transferability exists for the benefit of the bankrupt company's creditors.

⁴ This response represents the views of the Division of Investment Management with respect to the issues presented under the Investment Company Act. The Division of Corporation Finance will respond separately with respect to any issues your proposal may raise under the Securities Act of 1933 and the Securities Exchange Act of 1934, including whether transferability may be relevant to determining the status of trust interests under those statutes.

company or liquidating trust are merely incidental to its dissolution, within the meaning of section 7 of the Investment Company Act.⁵ Having stated our views, we will no longer respond to requests for interpretive or no-action letters in this area unless they present novel or unusual issues.

Sarah Wagman

Sarah A. Wagman
Attorney

⁵ See, e.g., *Integrated Resources*, supra note 2; *MPC Liquidating Trust*, supra note 2; *Oppenheimer Landmark Properties*, supra note 1; *Celina Financial Corporation*, supra note 1.

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February 14, 1997

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Re: ICH Corporation (Commission File No. 1-7697)
Withdrawal of Letter Dated February 12, 1997 and
Submission of Letter Dated February 14, 1997

Dear Sirs:

On behalf of ICH Corporation ("ICH"), a Delaware corporation currently undergoing voluntary reorganization, together with its wholly-owned subsidiaries, SWL Holding Corporation ("SWL") and Care Financial Corporation ("Care"), each a Delaware corporation (ICH, SWL and Care, collectively the "Debtors"), under Chapter 11 of the United States Bankruptcy Code, we hereby withdraw the request for no-action relief contained in our letter dated February 12, 1997, and submit in lieu thereof the enclosed request, all pursuant to the request of Mr. Michael Hyatte of the Division of Corporation Finance.

Pursuant to our conversation with Mr. Hyatte, we have deleted the second full paragraph found on page 9 of the February 12, 1997, letter, relating to future compliance by the Trust under the 1934 Act. Aside from this alteration, there are no differences between the February 12, 1997, letter and the February 14, 1997, letter enclosed herewith.

The enclosed no-action letter request relates to certain issues under federal securities laws raised by the Debtors' First Amended Joint Plan of Reorganization (the "Joint Plan"). The Joint Plan was filed with the United States Bankruptcy Court for the Northern District of Texas on November 15, 1996, and was confirmed by order entered February 7, 1997. Although the Joint Plan is scheduled to become effective on February 19, 1997, the Debtors intend that no securities will be distributed in accordance with the Joint Plan until the Staff has communicated its response to the enclosed request. We respectfully request that the Staff consider the enclosed

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request on an expedited schedule with the above mentioned effective date of the Joint Plan in mind.

We advise the Staff that we previously have discussed the matters contained in the enclosed request with Mark Green and Michael Hyatte of the Division of Corporation Finance and Sarah Wagman of the Division of Investment Management.

If you have any questions or require additional information regarding the foregoing, please contact the undersigned at (214) 745-5437. Thank you for your attention to this matter.

Very truly yours,



Rodney L. Moore

RLM:lc

Enclosures

cc: Mark Green, Securities and Exchange Commission
Michael Hyatte, Securities and Exchange Commission
Sarah Wagman, Securities and Exchange Commission
Angie Dodd, Securities and Exchange Commission
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February 14, 1997

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Re: I.C.H. Corporation
Commission File No. 1-7697

Dear Sirs:

We are corporate counsel to I.C.H. Corporation ("ICH") and its wholly-owned subsidiaries, SWL Holding Corporation ("SWL") and Care Financial Corporation ("Care"), each a Delaware Corporation (ICH, SWL and Care, collectively, the "Debtors"). The Debtors each filed a voluntary petition with the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on October 10, 1995 (the "Petition Date"). The Chapter 11 cases of the Debtors are being jointly administered and, on November 15, 1996, the Bankruptcy Court approved the Debtors' First Amended Disclosure Statement (the "Disclosure Statement") to be used to solicit votes on the Debtors' First Amended Joint Plan of Reorganization (the "Joint Plan"). A copy of the Disclosure Statement is enclosed herewith and the Joint Plan is attached to the Disclosure Statement as Exhibit B.

Pursuant to the Joint Plan, creditors holding allowed claims classified as ICH Class 5-General Unsecured Claims ("Class 5 Claimants") will, in exchange for their claims against ICH, receive beneficial interests ("Trust Interests") in a liquidating trust (the "Trust"). Holders of ICH's 11 ¼% Senior Subordinated Notes due 1996 and 11 ¼% Senior Subordinated Notes due 2003 (collectively, the "Notes"), and holders of security-related claims, if any, arising from transactions related to the Notes ("Note SRC Claimants"), are classified as Class 5-Claimants under the Joint Plan.

Also under the Joint Plan, holders of ICH preferred stock ("Preferred Stockholders") are classified as ICH Class 6-Preferred Stock, and holders of ICH common stock ("Common Stockholders") are classified as ICH Class 7-Common Stock. Holders of equity interest in ICH within each of ICH Class 6 and ICH Class 7 will, in exchange for their interests in ICH evidenced by such securities, receive shares of common stock ("Reorganized ICH Common Stock") of Reorganized ICH (hereinafter defined). As described in Section 4.1(c) of the Joint Plan and "Summary—Joint Plan Implementation—Cash-Out Option for Certain Holders of ICH Preferred Stock and ICH Common Stock" of the Disclosure Statement, Preferred Stockholders and Common Stockholders who own less than a specified amount of ICH preferred stock or common stock, or who elect to reduce their interest to a certain level, will have the option to elect to receive cash in lieu of Reorganized ICH Common Stock.

In addition, to the extent there are any securities-related claims arising from transactions related to ICH preferred stock or common stock that are allowed by the Bankruptcy Court, such claims will be classified within ICH Class 6 or ICH Class 7, depending on whether the claim arose from transactions in ICH preferred or common stock. Holders of such claims ("Equity SRC Claimants") also will receive shares of Reorganized ICH Common Stock in exchange for their claims against ICH based on specific provisions contained in Sections 11.4 and 11.5 of the Joint Plan. Distributions of Reorganized ICH Common Stock and cash to be made by Reorganized ICH to members of ICH Class 6 and ICH Class 7 will be effected through an independent distribution agent engaged for such purpose (the "Distribution Agent").

This letter is submitted on behalf of the Debtors to request that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that it will not recommend that enforcement action be taken if the Debtors complete the transactions contemplated by the Joint Plan and otherwise proceed as described in this letter if:

- (1) Reorganized ICH does not comply with the registration requirements of the Securities Act of 1933, as amended (the "1933 Act"), with respect to the issuance and distribution of Reorganized ICH Common Stock to members of ICH Class 6 and ICH Class 7 in accordance with the terms of the Joint Plan;
- (2) the Trust does not comply with the registration requirements of the 1933 Act or the qualification requirements of the Trust Indenture Act of 1939, as amended (the "1939 Act"), with respect to the creation of Trust Interests and the issuance and distribution of certificates evidencing Trust Interests to Class 5 Claimants in accordance with the terms of the Joint Plan;
- (3) the Trust Interests are created and certificates evidencing Trust Interests are distributed, and the Trust operates as provided by the Joint Plan, without compliance with the registration requirements of the Investment Company Act of 1940, as amended (the "1940 Act");

- (4) ICH continues to comply with the periodic filing requirements under the Securities Exchange Act of 1934, as amended (the "1934 Act"), as contemplated by the Staff's letter to ICH dated May 10, 1996, and Reorganized ICH complies with the registration and reporting requirements of the 1934 Act in the manner and on the basis set forth below;
- (5) recipients of Reorganized ICH Common Stock who are not affiliates of Reorganized ICH and are not underwriters within the meaning of Section 1145(b) of the Bankruptcy Code ("§1145 Underwriters") with respect to the Reorganized ICH Common Stock freely trade their Reorganized ICH Common Stock to the same extent as if they received such securities in a public offering registered under the 1933 Act; §1145 Underwriters (who are not also affiliates of Reorganized ICH) resell such securities in ordinary trading transactions or pursuant to other exemptions from registration under the 1933 Act that may be available; and affiliates of Reorganized ICH (who also are §1145 Underwriters under Section 1145(b)(1)(D) of the Bankruptcy Code) resell their Reorganized ICH Common Stock pursuant to exemptions from registrations that may be available under the 1933 Act, including pursuant to Rule 144 promulgated under the 1933 Act (without compliance with the holding period requirements of paragraph (d) of Rule 144) on the basis set forth below; and
- (6) recipients of Trust Interests who are not affiliates of the Trust and are not §1145 Underwriters with respect to the Trust Interests freely trade their Trust Interests to the same extent as if they received such Trust Interests in a public offering registered under the 1933 Act; §1145 Underwriters (who are not also affiliates of the Trust) may resell such securities in ordinary trading transactions or pursuant to other exemptions from registration under the 1933 Act that may be available; and affiliates of the Trust (who also are §1145 Underwriters under Section 1145(b)(1)(D) of the Bankruptcy Code) resell their Trust Interests pursuant to exemptions from registration that may be available under the 1933 Act, including pursuant to Rule 144 promulgated under the 1933 Act (without compliance with the holding period requirements of paragraph (d) of Rule 144) on the basis set forth below.

I. BACKGROUND

A. Business of Debtors and Chapter 11 Proceedings

ICH, formerly known as Southwestern Life Corporation, is an insurance holding company. Historically, ICH, through its insurance subsidiaries, provided a broad range of life insurance, accident insurance, health insurance, and annuity products to individuals and groups. ICH also owns certain non-insurance subsidiaries, including SWL and Care. In recent years, ICH

encountered financial difficulties, due in significant part to a strategy of pursuing growth through leveraged acquisitions during the 1980's. These financial difficulties precipitated the filing by the Debtors of their petitions under Chapter 11.

Subsequent to the Petition Date, ICH has disposed of all of its operating subsidiaries, and its assets consist principally of cash, investment securities, receivables and real property (see "Business of Debtors—Assets" and Exhibit D of the Disclosure Statement).

On October 10, 1996, the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") and the Official Committee of Equity Security Holders (the "Equity Committee") (collectively, the "Plan Proponents") filed a joint plan of reorganization for the Debtors. On November 15, 1996, the Joint Plan, as amended, was filed with the Bankruptcy Court and, after notice and hearing, the Bankruptcy Court approved the Disclosure Statement and authorized the Plan Proponents to solicit votes on the Joint Plan. A copy of the Disclosure Statement was provided to each person entitled to vote on the Joint Plan, including all Class 5 Claimants and all members of ICH Class 6 and ICH Class 7 as of the November 15, 1996, voting record date.

As of the January 24, 1997, voting deadline, each class of unsecured creditors had submitted sufficient votes to accept the Joint Plan to constitute class acceptance, and the Joint Plan was confirmed at a hearing held in the Bankruptcy Court on January 31, 1997. The Order of the Bankruptcy Court confirming the Joint Plan (the "Confirmation Order") was entered on February 7, 1997. The Effective Date of the Joint Plan will occur on February 19, 1997, subject to the filing of an appeal and the obtaining of a stay of the effectiveness of the Confirmation Order pending appeal by any such appellant.

B. ICH Securities

As of November 15, 1996, ICH had approximately 34,000 Common Stockholders of record and 1,200 Preferred Stockholders of record. The common and preferred stock of ICH were listed and traded on the American Stock Exchange ("AMEX"). The common stock also was listed and traded on the Chicago Stock Exchange. The AMEX suspended trading in ICH's common and preferred stock as of September 26, 1995, and the Chicago Stock Exchange suspended trading in the common stock on November 20, 1995. Effective as of November 15, 1995, the Commission granted the application of the AMEX for removal of the common and preferred stocks of ICH from listing on the AMEX. On February 9, 1996, the Commission granted the application of the Chicago Stock Exchange for removal of the common stock of ICH from listing on the Chicago Stock Exchange. There is no active market for the common or preferred stock at the present time. The common stock is traded in the over-the-counter market on the electronic bulletin board of the National Association of Securities Dealers, Inc.

As of November 15, 1996, ICH also had approximately 400 holders of record of its 11 ¼% Senior Subordinated Notes due 1996, and approximately 130 holders of record of its 11 ¼% Senior Subordinated Notes due 2003. While the Notes were not listed on any national or regional securities exchange, limited trading currently is taking place in the over-the-counter market.

Prior to 1996, ICH had complied with all periodic reporting obligations under Section 13(a) of the Exchange Act. A Form 12b-25 pertaining to the filing of ICH's Annual Report on Form 10K for the fiscal year ended December 31, 1995, was filed on April 1, 1996.

By letter dated April 2, 1996, this firm requested, on behalf of ICH, that the Staff confirm that it would not recommend enforcement proceedings if ICH filed with the Commission, under cover of a Current Report on Form 8-K, all periodic financial reports and the final report which are required to be filed with the U.S. Trustee and the Bankruptcy Court in the Debtors' bankruptcy proceeding, in lieu of the Annual, Quarterly and Current Reports on Forms 10-K, 10-Q and 8-K otherwise required to be filed. As part of such request, ICH undertook to file such Current Reports within 15 days after such periodic and final reports are filed with the U.S. Trustee and the Bankruptcy Court. By letter dated May 10, 1996, the Commission granted the positions requested, and to date ICH has complied with such undertaking, as evidenced by the Form 8-K's identified on Annex I attached to this letter.

C. The Joint Plan of Reorganization

Under the Joint Plan, the assets of the Debtors' estates, except those assets to be retained by Reorganized ICH, will be transferred to the Trust (the "Trust Assets"). The Trust will liquidate the Trust Assets, pay all priority and administrative claims, and pay in full all amounts ultimately payable to the creditors in ICH Classes 1, 2, 3 and 4. The balance of Trust Assets will be distributed to Class 5 Claimants pro rata based on their respective Trust Interests. The Joint Plan also provides that ICH will emerge from Chapter 11 as a reorganized corporation ("Reorganized ICH"), owned by the members of ICH Class 6 and ICH Class 7. As reflected on Exhibit D to the Disclosure Statement, the projected value of the assets of the Debtors' estates as of December 31, 1996, is approximately \$380,805,000, with assets having a projected value of approximately \$11,085,000 being retained by Reorganized ICH and the remaining assets with a projected value of approximately \$369,720,000 being transferred to the Trust. See "Summary—Classes and Treatment by Class" and "Discussion of the Joint Plan—Treatment of Claims and Interests" of the Disclosure Statement for a discussion of the classification of claims and interests and their treatment under the Joint Plan.

The Trust

The Trust will be established on the Effective Date. The Trust will be governed by a trust agreement (the "Trust Agreement"), a preliminary form of which is attached as Exhibit A to the Joint Plan and a substantially final form of which was filed with the Bankruptcy Court on January 24, 1997 (a copy of which is enclosed with this letter). The sole purpose of the Trust will be to liquidate the Trust Assets and distribute the proceeds as described above, and the Trust Agreement will prohibit the Trust from engaging in any trade or business. The Trust will terminate upon the earlier to occur of: (i) the liquidation of all of the Trust Assets and the distribution of the proceeds to the holders of the Trust Interests or (ii) three years after the Effective Date, subject to extension if, after continuing reasonable efforts, the Managing Trustee is unable to dispose of the Trust Assets, and then only to the extent ordered by the Bankruptcy Court. The Trust Agreement will expressly provide that the Bankruptcy Court will retain non-exclusive jurisdiction over the Trust, including jurisdiction to resolve controversies and disputes arising in connection with the Trust.

Trust Assets The Trust Assets are projected to consist primarily of cash, short term investments and highly liquid investment-grade securities. Additionally, the Trust Assets will include certain real estate interests, debt and equity securities and certain causes of action as more fully described in "The Trust—Trust Assets and Liquidation of Trust Assets" and on Exhibit D to the Disclosure Statement.

The value of the Trust Assets is presently estimated to be approximately \$370 million, of which approximately 80% is cash, short term investments, and highly liquid, investment grade securities. The assets expected to be transferred to the Trust on the Effective Date include:

- (i) Cash and short-term investments of \$183 million;
- (ii) Restricted cash of \$35 million in an interest bearing escrow account to satisfy the indemnification obligations, if any, of ICH in connection with the sale of its principal insurance subsidiaries, the remaining balance of which will be released on August 31, 1997;
- (iii) All assets of Bankers Multiple Line Insurance Company, a wholly-owned subsidiary of ICH ("BML"), excluding Capital and Surplus Assets (as defined in the Joint Plan) and BML's real estate interest in Perry Park. BML's asset's prior to satisfying estimated liabilities of \$6 million for pending policy holder litigation and potential indemnification claims and other liabilities, are projected to consist of approximately:
 - (a) \$33 million in cash and short-term investments (in addition to ICH's cash and short-term investments) including restricted cash of

- \$3.5 million in an escrow account maintained to satisfy environmental indemnification obligations of BML,
- (b) \$23 million in bonds and structured securities, substantially all of which are investment grade and highly liquid,
 - (c) \$12 million in limited partnership interests,
 - (d) \$12 million in real estate interests, and
 - (e) \$8 million in miscellaneous other assets;
- (iv) ICH's investment in Facilities Management Installation, Inc., a wholly-owned subsidiary of ICH ("FMI"), of approximately \$9 million. FMI's assets consist principally of \$6 million in cash and short-term investments and a \$6 million receivable from ICH. Liabilities of \$3 million related to employment related obligations;
 - (v) Note from Southwestern Financial Corporation of \$40 million;
 - (vi) A profits interest in Bluebonnet Savings Bank, FSB (the "CFSB Interest") with an assigned value of \$18 million (for a discussion of the CFSB Interest, see "Certain Risk Factors to be Considered--Factors Relating to the Liquidating Trust--Profits Interest in CFSB Corporation" of the Disclosure Statement);
 - (vii) \$1 million in real estate interests; and
 - (viii) Common stock portfolio of \$469,000.

Management. The Trust will be managed by a Managing Trustee, expected to be Susan A. Brown, presently Co-Chief Executive Officer and a Director of the Debtors. The Trust Agreement also provides for three supervisory trustees (the "Supervisory Trustees"), initially expected to be members of the present Creditors Committee. Generally, the Managing Trustee will have authority to manage, dispose of and invest Trust Assets, but will be required to obtain the consent of the Supervisory Trustees to take certain actions, including early termination of the Trust, entering into contracts in amounts greater than \$50,000, borrowing of funds, the investment of Trust Assets except as provided by the Trust Agreement, and the approval of distributions. Under the Trust Agreement, the powers of the Trustees are exercisable solely in a fiduciary capacity with, and in furtherance of, the purposes of the Trust.

In the event of the death, resignation or removal of the Managing Trustee, the Supervisory Trustees will appoint a successor Managing Trustee. Upon the death, resignation or removal of a Supervisory Trustee, the remaining Supervisory Trustees may, but shall not be required to, appoint a successor Supervisory Trustee.

Trust Reporting. The Managing Trustee will maintain books and records of account relating to the Trust Assets, the proceeds thereof, reserves, and expenses incurred. The Managing Trustee also will prepare the following:

Monthly. On a monthly basis, within two (2) weeks after the end of each month, an unaudited report of the receipts and disbursements of the Trust and the cash position of the Trust.

Quarterly. On a quarterly basis, beginning with the first calendar quarter ending after the Effective Date, within forty-five (45) days after the end of the subject quarter, a report of the activities of the Trust detailing for the preceding quarterly period the activities of the Trust, including:

- (i) an unaudited operating statement (prepared on a cash basis) showing all revenues received by the Trust and all expenses of operations of the Trust (including all expenses associated with the sale of any Trust Assets paid by the Trust);
- (ii) an unaudited written report and accounting showing (a) the assets and liabilities of the Trust at the end of such period, (b) any changes in the Trust Assets, (c) the amount of any reserves or escrows of the Trust, (d) any material action taken by the Managing Trustee or the Supervisory Trustees in the performance of their duties under the Joint Plan and the Trust Agreement; and
- (iii) an overall status report for the next quarterly period.

Monthly reports for any month ending a quarterly period may be included in the quarterly report for such period, and quarterly reports for the fourth quarter of each calendar year may be included within the annual reports described below, if such annual reports are prepared.

Annually. To the extent required by the Bankruptcy Court or by applicable law (or to gain an exemption from applicable law), within 90 days after the end of each calendar year, beginning with the first year end occurring after the Effective Date, the Trust will prepare reports for the prior year as described in clause (i) and (ii) above,

except that such reports will be for a full year (or portion thereof in which the Trust has been in existence) and will be audited.

The reports will be distributed to each Supervisory Trustee and to each Trust beneficiary who requests a copy in writing. The monthly, quarterly and, if prepared, annual reports also will be filed with the Bankruptcy Court.

Trust Interests. Each Class 5 Claimant will have a percentage interest in the Trust (hereinabove defined as "Trust Interests") equal to (i) the allowed amount of such claimant's Class 5 Claim divided by (ii) the sum of the total of the allowed amounts of all Class 5 Claims as of the Effective Date and the total amount of all contested claims as of the Effective Date. Such percentages automatically will be adjusted in accordance with the above formula upon and as of the date of the disallowance of any such contested claim or the allowance of any such contested claim in an amount other than the amount of such contested claim as of the Effective Date. The Trust Interests will not entitle any beneficiary of the Trust to any title in or to the Trust Assets and will not represent an obligation of the Trust to pay a sum certain amount, but rather will represent only a right to receive a pro rata portion of the proceeds of the Trust Assets pursuant to the terms of the Joint Plan and the Trust Agreement.

Holders of Trust Interests will not have any voting rights with respect to their Trust Interests. Rather, the Bankruptcy Court will retain jurisdiction over matters relating to the Trust and the Trust Assets, and the Trust Agreement may be amended only by approval of the Supervisory Trustees and the issuance of an order by the Bankruptcy Court.

The Trust proposes to issue certificates ("Trust Certificates") to represent the Trust Interests. Trust Certificates will be issued in amounts solely related to each ICH Class 5 Claimant's allowed claim or portion thereof that the Trust Certificate represents, and will reflect on the face of such Trust Certificate the amount of such claim that the Trust Certificate represents. Upon resolution of a contested Class 5 Claim, and to the extent such contested claim becomes an allowed claim, the holder of such allowed claim will receive Trust Interests as provided in the Joint Plan and the Trust Agreement. Upon distribution by the Trust of the Trust Certificates to the Trust beneficiaries, Trust Certificates will be transferable and the Trust register will be maintained by the Managing Trustee or a designated transfer agent. The Trustees are not authorized to facilitate the development of an active trading market for the Trust Interests. The Trust Interests will not be listed on any national securities exchange or the National Association of Securities Dealers Inc. Automated Quotation System (the "NASDAQ"). Neither the Trustees nor the Trust will engage the services of any market maker, facilitate the development of an active trading market or encourage others to do so, place any advertisements in the media promoting investments in the Trust or collect or publish information about prices at which the Trust Interests may be transferred.

Prior to the distribution of Trust Certificates, Trust Interests may not be transferred and no purported transfer of any Trust Interest will be registered on the Trust register. After the distribution of Trust Certificates, any Trust Interest may be transferred upon the Trust register.

Distributions. Distributions from the Trust to Class 5 Claimants will be allocated pro rata among such holders based on their respective Trust Interests, and will be made from time to time as proceeds are available for distribution. It is anticipated that initial distributions from the Trust to Class 5 Claimants will be made within 20 days after the Effective Date, with the amount of such initial distributions to be determined based on the amount of available cash and the amount required to be reserved for contested claims. It is currently anticipated that the initial distributions will be approximately 60% of the Trust Assets. Thereafter, distributions will be made from time to time as additional proceeds become available, either by the liquidation of Trust Assets or the resolution of contested claims, but will be made at least annually.

The Trust will withhold from the property to be distributed by it an amount sufficient to be distributed on account of contested claims as of the initial distribution date. As to any contested claim, upon a request for estimation by the party in interest, the Bankruptcy Court will determine what amount is sufficient to withhold as the reserved distribution amount. In the event that no party in interest elects to request such an estimation from the Bankruptcy Court with respect to a contested claim, the Trust will withhold as the reserved distribution amount the amount which, in the discretion of the trustees, such claimant would have received under the Joint Plan, if any, if the proof of claim filed by or on behalf of that claimant were allowed. As soon as practicable after a contested claim becomes an allowed claim, any reserved property that would have been distributed to the holder of such claim had such claim been an allowed claim on the Effective Date, to the extent of the allowed amount of such claim, will be distributed to the holder of such claim.

Pending distribution, the Trust may invest Trust Assets in Permitted Investments, as hereafter defined, which will be limited to short-term, investment grade investments. "Permitted Investments" consist of the following:

- (i) securities issued or directly and fully guaranteed or insured by the government of the United States or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition;
- (ii) time deposits, certificates of deposit and bankers' acceptances of any domestic commercial bank the short term debt obligations of which have been rated A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service, Inc. and which mature in not more than one year;

- (iii) commercial paper rated A-1 or the equivalent thereof by Standard & Poor's Corporation or P-1 or the equivalent thereof by Moody's Investors Service, Inc., and in each case having maturities of not more than 90 days from the date of acquisition; and
- (iv) money market funds or money market mutual funds (other than closed-end funds) which maintain a constant net asset value and have at the time of such investment a rating by Moody's Investors Service, Inc. or Standard & Poor's Corporation at least equivalent to "A."

Reorganized ICH

ICH will emerge from the Chapter 11 proceeding, restate its charter in such form as approved by the Bankruptcy Court and continue operations with respect to certain assets of the Debtors estates retained by Reorganized ICH (the "Retained Assets"). The Retained Assets will consist principally of approximately \$3.0 million in cash and a certain residential and recreational real estate development previously owned by ICH. Reorganized ICH also will either receive certain proceeds from the sale of all of the outstanding capital stock of BML, a property and casualty insurer licensed in 50 states and ICH's sole remaining insurance subsidiary (which presently does not conduct any operations), or retain the capital stock of BML. If ICH retains its interest in BML, it will have the option, exercisable for 90 days after the Effective Date, to sell its interest in BML to the Trust for \$5 million cash. As discussed above, all assets of ICH, other than the Retained Assets, will be transferred to the Trust.

Management and Operations. The initial board of directors of Reorganized ICH will consist of four persons who served as members of the Equity Committee. On February 12, 1997, the Equity Committee announced that Reorganized ICH will likely purchase the stock of Sybra, Inc., which owns 150 Arby's restaurants in four states. The members of the initial board of Reorganized ICH have not made a final determination as to the nature of other business operations, if any, which will be conducted or acquired by Reorganized ICH following the Effective Date. Information regarding future operations and management of Reorganized ICH is set forth under "Reorganized ICH" in the Disclosure Statement. Letters of Transmittal distributed to holders of ICH preferred and common stock will be accompanied by updated information regarding the anticipated business operations of Reorganized ICH to the extent any material developments with respect thereto have occurred since the date of the Disclosure Statement.

Equity Interest in Reorganized ICH. Members of ICH Class 6 and ICH Class 7 will receive approximately 55% and 45%, respectively, of the Reorganized ICH Common Stock. Reorganized ICH intends to register the Reorganized ICH Common Stock pursuant to Section 12(g) of the 1934 Act on Form 8-A promptly after the Effective Date (but in any event prior to

any distribution of Reorganized ICH Common Stock), but has not yet determined whether to seek listing of the Reorganized ICH Common Stock on any securities exchange or the NASDAQ.

II. DISCUSSION

A. Issuance of Reorganized ICH Common Stock and Trust Interests -- 1933 Act

Except with respect to an "underwriter" (as defined in Section 1145(b) of the Bankruptcy Code), Section 1145(a)(1) of the Bankruptcy Code exempts from the registration requirements of the 1933 Act and state securities laws the offer or sale, pursuant to a plan of reorganization, of a security issued by the debtor or a successor to the debtor under the plan in exchange or principally in exchange for a claim against, or an interest in, the debtor. Section 1125(e) of the Bankruptcy Code provides a safe harbor from federal and state securities law liability for persons who participate, in good faith and in accordance with the requirements of the Bankruptcy Code, in the offer, issuance, sale or purchase of a security, offered or sold under a plan, of the debtor or a "newly organized" successor to the debtor.

1. Reorganized ICH

As discussed above, upon confirmation of the Joint Plan, ICH will emerge from the Chapter 11 proceeding, restate its charter and continue operations with the Retained Assets. Reorganized ICH Common Stock will be issued to members of ICH Class 6 and ICH Class 7 in exchange for their interest in or claim against ICH.

In our opinion, the Reorganized ICH Common Stock will constitute securities of ICH (*i.e.*, a debtor for purposes of Section 1145(a) of the Bankruptcy Code), and the offer and sale of Reorganized ICH Common Stock pursuant to the Joint Plan will be exempt from registration under the 1933 Act by virtue of the exemption provided by Section 1145(a) of the Bankruptcy Code. The Staff took a similar position in Argo Petroleum Corporation (September 14, 1987). In Argo, Argo Petroleum Corporation, a debtor in possession, retained an undivided 25% interest in certain assets transferred to a secured creditor of Argo and certain assets transferred to a newly formed corporation for the benefit of Argo's stockholders. Argo's existing common stock was cancelled and Argo issued new common stock to its unsecured creditors. The Staff issued a no-action position with respect to the issuance of the new common stock of Argo without registration under the 1933 Act.

It also is our opinion that Reorganized ICH is a "debtor" for purposes of the safe harbor from liability provided by Section 1125(e) of the Bankruptcy Code and that the Debtors and others who act in good faith in the offer, issuance, sale or purchase of Reorganized ICH Common Stock under the Joint Plan and in accordance with the applicable provisions of the Bankruptcy Code will be afforded the protections of Section 1125(e).

We respectfully request that the Staff confirm our views as stated above.

2. The Trust

We also believe that the Trust may be established and the Trust Interests created and Trust Certificates distributed to Class 5 Claimants under the Joint Plan without the registration of the Trust Interests or the Trust Certificates under Section 5 of the 1933 Act.

The Staff consistently has taken no-action positions with respect to the registration of trust interests under the 1933 Act where the liquidating entity will exist only to effect liquidation of its assets and will terminate within a reasonable period of time. (See, e.g., Damson Oil Corporation, February 21, 1992; American Freight Systems, Inc., July 15, 1991; D.H. Baldwin Company, June 13, 1986). Various theories have been advanced to justify the no-action requests, including that the issuance of a liquidating trust's interests does not involve a sale because no new consideration is given or no new investment decision is made and that, even if the issuance does involve a sale, a liquidating trust established under a debtor's plan of reorganization is a "successor" to the debtor with respect to the assets to be acquired by the trust and that, as a successor to the debtor, the interests may be distributed without 1933 Act registration pursuant to the exemption under Section 1145(a)(1) of the Bankruptcy Code. See Damson Oil Corporation, *supra*; D.H. Baldwin Company, *supra*; Nelson Bunker Hunt and Caroline Lewis Hunt (November 17, 1989). Cf. Bedford Computer Corporation (October 14, 1987); Eugene P. Beard (May 15, 1984). These theories also are applicable to the Trust. The Staff also has deemed it significant that the Bankruptcy Court retains jurisdiction over a liquidating trust. See American Freight Systems, Incorporated, *supra*. This condition also will be satisfied by the Trust.

Furthermore, although Section 1145(a) does not apply to securities of an "underwriter," we do not believe that the Trust constitutes an "underwriter" within the meaning of Section 1145(a). Section 1145(b) provides that "underwriter" includes an "issuer," as defined in Section 2(11) of the 1933 Act, with respect to such securities. It has been recognized that Section 1145(b)(1)(D) was intended to apply to resales of securities issued pursuant to a plan by controlling persons of an issuer who are included within the definition of an issuer in Section 2(11) of the 1933 Act, and is not intended to prohibit the issuance of securities by such issuer pursuant to a plan of reorganization. A contrary interpretation would render meaningless the exemption from registration otherwise provided by Section 1145(a). See In re Stanley Hotel, *supra*; Eugene P. Beard, *supra*; see also In re Amarex, *supra*; Collier on Bankruptcy, 15th edition, § 1145.02. Accordingly, we do not believe that the issuance of the Trust Interests and the Trust Certificates to Class 5 Claimants pursuant to the Joint Plan are sales by an "underwriter" within the meaning of Section 1145.

We believe that our position is analogous to the no-action positions taken by the Staff with respect to cases involving a voting trust established for the benefit of creditors of a Chapter

11 debtor (Eugene P. Beard, *supra*) and a liquidation trust under Section 337 of the Internal Revenue Code (Management Assistance Inc., *supra*) in which the trust interests were transferable. Furthermore, we do not believe that the fact that the Trust Interests may be transferable should affect the Staff's position with respect to registration under the 1933 Act of the issuance of the Trust Interests, particularly if periodic financial information regarding the Trust is made publicly available, as discussed above under "Background—The Joint Plan of Reorganization—The Trust—Trust Reporting."

Based upon the Staff's consistent no-action positions with respect to liquidating trusts and our positions as stated in the preceding paragraphs, we are of the opinion that the Trust Interests and Trust Certificates may be issued without registration under the 1933 Act by virtue of the exemption from registration provided by Section 1145(a)(1) of the Bankruptcy Code. We note, in particular, that the Trust will acquire substantially all of the assets currently held by the Debtors, will exist only for a limited period of time and to effect the liquidation of its assets, will file with the Bankruptcy Court, and provide to Trust beneficiaries upon request, available financial information regarding the Trust, will file with the Commission all reports filed with the Bankruptcy Court at all times when the Trust is subject to the reporting requirements of the 1934 Act and will remain under the jurisdiction of the Bankruptcy Court.

It also is our opinion that the Trust is a "new organized successor to a debtor" for purposes of the safe harbor from liability provided by Section 1125(e) of the Bankruptcy Code and that the Debtors and others who act in good faith in the offer, issuance, sale or purchase of Trust Interests under the Joint Plan and in accordance with the applicable provisions of the Bankruptcy Code will be afforded the protections of Section 1125(e).

We respectfully request that the Staff confirm our views as stated above.

B. ICH/Reorganized ICH-1934 Act

As discussed above, prior to 1996 ICH filed periodic reports under Section 13 of the 1934 Act. Commencing in 1996, and as permitted by the Staff's no action position granted by letter dated May 10, 1996, ICH ceased filing periodic reports under Section 13 of the 1934 Act and began filing copies of the periodic financial reports required to be filed with the Bankruptcy Court under cover of a Current Report on Form 8-K. At the time of ICH's request for the Staff's no action position, it was contemplated (and described in ICH's letter to the Staff) that ICH would liquidate and wind up its affairs as part of the Chapter 11 case. However, as a result of negotiations among the Plan Proponents since the date of ICH's April 2, 1996, letter to the Staff (the "April Letter"), ICH will emerge from the Chapter 11 case as Reorganized ICH and continue operations. Furthermore, as described in Section I.B. above, as of January 1, 1997, each outstanding class of ICH securities was held by more than 300 persons. Accordingly, absent a position by the Staff to the contrary, ICH currently, and Reorganized ICH as of the Effective Date, could be required to comply with the reporting requirements of Section 13 of the 1934 Act.

For the reasons set forth in the April Letter, we request the Staff to confirm that ICH will continue to be permitted to comply with the reporting requirements of the 1934 Act through the Effective Date by continuing to file under cover of a Current Report on Form 8-K the periodic financial reports required to be filed by the Debtors with the Bankruptcy Court as described in the April Letter.

In addition, for the reasons stated in the April Letter, Reorganized ICH will be unable to comply with the reporting requirements of an annual report on Form 10-K for the year ended December 31, 1996, and the period from and after December 31, 1996, through the Effective Date without unreasonable effort and expense. Furthermore, information relating to such periods would relate to ICH as it existed prior to the Effective Date, and such information would not be meaningful to potential investors or to holders of Reorganized ICH Common Stock. Therefore, although Reorganized ICH will be a continuation of ICH from and after the Effective Date, we request the Staff confirm that it will not recommend enforcement proceedings if Reorganized ICH does not file an Annual Report on Form 10-K for the year ended December 31, 1996, and complies with its reporting requirements under the 1934 Act by commencing filing reports under Section 13 of the 1934 Act by filing a Quarterly Report on Form 10-Q for the period from and after the Effective Date through March 31, 1997, as well as any Current Reports as may be required to be filed, and, thereafter, by filing all reports as otherwise required by the 1934 Act.

Finally, we request that the Staff confirm that Reorganized ICH may register the Reorganized ICH Common Stock under the 1934 Act by filing Form 8-A. Reorganized ICH intends to registered the Reorganized ICH Common Stock under the 1934 Act promptly after the Effective Date and before any Reorganized ICH Common Stock is distributed. The general instructions for the use as to Form 8-A provide for the Form's use by an issuer which is required to file reports pursuant to Section 13 or 15(d) of the 1934 Act. As previously stated, ICH previously has and continues to file reports under Section 13 of the 1934 Act. We therefore request that the Staff confirm that Reorganized ICH may register the Reorganized ICH Common Stock under the 1934 Act by filing Form 8-A.

C. The Trust -- 1939 Act

The Staff consistently has taken no-action positions where liquidating trusts have not qualified an indenture under the 1939 Act relating to the beneficial interests in a liquidating trust. Previous no-action positions rest on the theory that, even if the interests in a liquidating trust are securities, they are, nevertheless, exempt from the provisions of the 1939 Act pursuant to Section 304(a)(1), which exempts "any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (C) a temporary certificate, or guarantee of, any such note, bond, debenture, evidence of indebtedness or certificate." D.H. Baldwin Company, supra; Nelson Bunker Hunt, supra; American Freight Systems, Inc., supra.

We believe that the Trust Interests will not constitute "a note, bond, debenture, or other evidence of indebtedness" as those terms are used in the 1939 Act. The essence of such debt instruments described in the 1939 Act centers upon an unconditional obligation founded upon a contractual obligation to pay a sum certain. The Trust Interests will not represent a right for the holders of the Trust Interests to receive payment of a sum certain. Rather, like the beneficial trust interests found in the above cited no-action letters, they will represent only a right to receive a portion of the proceeds ultimately distributed by the Trust upon the liquidation of its assets. As such, the Trust Interests will not constitute any evidence of indebtedness and, therefore, should be exempt from 1939 Act registration. We request that you concur in our view.

D. The Trust -- 1940 Act

Section 8 of the 1940 Act requires companies that are "investment companies" to register with the Commission. Under the relevant provisions of Section 3(a) of the 1940 Act, an entity is an investment company if it

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities . . .

. . . or

(2) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

We believe that the Trust does not fall within any of the relevant definitions of "investment company" cited above. The purpose of the Trust is to effect the orderly disposition, liquidation and distribution of the Trust Assets and to distribute Available Cash (as defined in the Trust Agreement) to holders of Trust Interests and to make the other distributions called for in the Plan to be made by the Trust, and with no objective to engage in a business. Even if one or more of those definitions applied to the Trust, several exemptions or exclusions under the 1940 Act would be available to it.

First, Section 3(b)(1) of the 1940 Act specifically exempts from the definition of "investment company" "[a]ny issuer primarily engaged . . . in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities." Based on current estimates by ICH, approximately 80% by value of the assets transferred to the Trust will consist of securities. The sole purpose of the Trust is to liquidate the Trust Assets and distribute the proceeds to the Trust beneficiaries. See "Background—The Joint Plan of Reorganization—The

Trust—The Trust Assets" above. Accordingly, notwithstanding that the Trust may invest Trust Assets in certain Permitted Investments pending distribution as described above under "Background—The Joint Plan of Reorganization—The Trust—Distributions" above, the primary activity of the Trust will be a business other than investing, holding or trading in securities and the exemption from the definition of "investment company" provided in Section 3(b)(1) of the 1940 Act should apply to the Trust.

We also believe that the Trust would be exempt from the registration requirements of the 1940 Act even if Section 3(b)(1) of the 1940 Act were not applicable. Section 7(b) of the 1940 Act provides that investment companies which have not registered with the Commission under the 1940 Act nevertheless may engage in transactions which merely are incidental to its dissolution. It is our view that, if the Trust were to be considered to be an investment company under the 1940 Act, its activities should be deemed to be incidental to its dissolution and, therefore, satisfy the requirements of Section 7(b).

In a recent no-action letter, the Division of Investment Management (the "Division") stated that it would not recommend enforcement action if a liquidating trust, created pursuant to a plan under Chapter 11 of the Bankruptcy Code, proceeded to liquidate its assets without registering under the 1940 Act in reliance on the exemption provided by Section 7(b) of the 1940 Act. MPC Liquidating Trust, March 10, 1994. The Division based its position upon representations that the trust: 1) would exist solely to liquidate its assets and distribute the proceeds, 2) would be prohibited from conducting a trade or business, and from making investments, except for temporary investments in government securities, 3) would not hold itself out as an investment company, 4) would remain under the jurisdiction of the Bankruptcy Court, and 5) would terminate within three years. Because the beneficial interests in the MPC trust would be represented by freely transferrable certificates, the Division further qualified its position by stating that: 1) the trust interests would not be listed on any securities exchange, 2) the trust would not engage the services of a market maker, facilitate the development of an active trading market for the interests, promote the interests in the trust, or collect or publish information regarding the prices at which the interests are traded, 3) an active trading market for the interests was unlikely to develop, and 4) the trust would comply with the registration and reporting requirements of the 1934 Act.

We note that the qualifications referred to by the Staff in the MPC letter generally apply to the Trust. As noted above, the sole purpose of the Trust will be to effect an orderly disposition, liquidation, and distribution of the proceeds of the assets of the Trust to the Trust beneficiaries, and the terms of the Trust Agreement will prohibit the Trust from engaging in a trade or business.

The Trust will not hold itself out as an investment company, but rather as a liquidating entity, and will remain under the jurisdiction of the Bankruptcy Court, filing quarterly reports relating to its activities. Finally, the Trust will terminate within a period of three years from the

effective date of the Joint Plan (subject to extension, if necessary, only by order of the Bankruptcy Court).

As stated above, although the Trust will issue freely transferrable certificates evidencing its beneficial interests, we do not believe that an active trading market is likely to develop with respect to the Trust Interests. Furthermore, the trustees are not authorized to facilitate the development of an active trading market for the Trust Interests. The Trust Interests will not be listed on any national securities exchange or the NASDAQ. Neither the Trustees nor the Trust will engage the services of any market maker, facilitate the development of an active trading market or encourage others to do so, place any advertisements in the media promoting investments in the Trust or collect or publish information about prices at which the Trust Interests may be transferred. In addition, significant information concerning the operation and status of the Trust will be publicly available pursuant to the terms of the Trust Agreement (*See* "Background—The Joint Plan of Reorganization—The Trust—Trust Reporting") and, if and when required, upon registration under the 1934 Act. Specifically, the Trust Agreement requires that the monthly and quarterly reports regarding the operations and financial status of the Trust be prepared and that copies of such reports must be provided to the Supervisory Trustees and any Trust beneficiary requesting a copy (together with the annual reports, if prepared) and must be filed with the Bankruptcy Court.

Based on the foregoing, we believe that the Trust does not constitute an investment company or that, if it does, it is exempt from registration on the basis stated above. We request that the Division concur that the Trust be established and operate as provided in the Joint Plan and the Trust Agreement without registering under the 1940 Act.

E. Resales

Section 1145(c) of the Bankruptcy Code provides that an offer or sale of securities that qualifies for the exemption provided for in Section 1145(a)(1) is deemed to be a public offering. Consequently, securities issued pursuant to a Section 1145(a) are unrestricted and recipients of such securities are free to resell the securities without registration, or without compliance with Rule 144, so long as the selling security holders are not §1145 Underwriters and are not affiliates of the issuer. The Staff previously has concurred with this view. *See Damson Oil Corporation, supra; UNR Industries, Inc., supra.* We ask that the Staff confirm that persons receiving Trust Interests and Reorganized ICH Common Stock pursuant to the Joint Plan who are not §1145 Underwriters, and who are not affiliates of the respective issuer, may resell their securities without registration and without compliance with Rule 144.

With respect to resales of Trust Interests and Reorganized ICH Common Stock by persons who otherwise would constitute §1145 Underwriters (other than affiliates of the respective issuer), we request that the Staff concur that such persons will be engaged in, and may freely resell their

securities pursuant to, "ordinary trading transactions" so long as none of the following factors are present:

(i) concerted action by (a) the recipients of the Trust Interests or Reorganized ICH Common Stock, as applicable, in connection with the sale or (b) distributors on behalf of one or more of the recipients of the Trust Interests or Reorganized ICH Common Stock, as applicable, in connection with such sale;

(ii) the use of informational documents in connection with the sale of the Trust Interests or Reorganized ICH Common Stock, as applicable, other than the Disclosure Statement, including any amendments thereto, and any reports filed by the Trust or Reorganized ICH, as applicable, with the Commission pursuant to the 1934 Act; and

(iii) the payment of special compensation to brokers or dealers in connection with the sale of the Trust Interests or Reorganized ICH Common Stock, as applicable, designed as a special incentive to resell such securities, other than the compensation that would be paid pursuant to arm's-length negotiations between a seller and a broker or dealer, each acting unilaterally, and not greater than the compensation that would be paid for a routine similar sized sale of a similar issuer.

These three factors are substantively identical to those set forth in UNR Industries Inc. and the 1986 Manville no-action letter referred to therein.

We believe that permitting the resale of Trust Interests and Reorganized ICH Common Stock in transactions as described above is consistent with the legislative history of Section 1145 which indicates Congress intended to restrict resales only when made by "real underwriters that participate in a classical underwriting." H. Rep. No. 95-575 at 420-21 (1977). Our view that transactions not encompassing the preceding factors are "ordinary trading transactions" in which persons who otherwise would constitute §1145 Underwriters (other than affiliates of the respective issuer) may engage previously has been confirmed by the Staff. See UNR Industries Inc., *supra*.

With respect to resales by affiliates, we request that the Staff concur that such affiliates of the Trust may resell their Trust Interests and such affiliates of Reorganized ICH may resell their Reorganized ICH Common Stock pursuant to Rule 144 (other than the holding period requirements of paragraph (d) of Rule 144), to the extent available.

In this regard, we recognize that in order for Rule 144 to be available to affiliates of the Trust or Reorganized ICH, the requirements of Rule 144(c)(1) must be satisfied by the applicable issuer of the securities to be sold. That subparagraph requires, in part, that an issuer must have

been subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act for at least 90 days preceding any sale of its securities made in reliance upon Rule 144, and have filed all reports required to be filed thereunder during the 12 months preceding such sale. Therefore, unless the Trust or Reorganized ICH, as applicable, is deemed to have been subject to the Exchange Act reporting requirements for the period required by subparagraph (c)(1), affiliates of the Trust or Reorganized ICH, as applicable, would be prevented from utilizing Rule 144 during the 90-day period immediately following the registration by such entity under the Exchange Act.

As discussed above, ICH has been subject to the reporting requirements of the Exchange Act for many years. All reports required to be filed pursuant to the 1934 Act during 1996 were satisfied by the filing of Current Reports on Form 8-K as permitted by the Staff's letter of May 10, 1996, issued in response to the April Letter. In light of the disclosure which has been effected by reason of ICH's prior Exchange Act reporting (including such Form 8-K's) and through the Disclosure Statement relating to the Joint Plan, the "current public information" requirements of Rule 144 will in our view be substantially met.

For these reasons, we request that the Staff deem ICH to be a predecessor of the Trust for purposes of the 90-day requirement of Rule 144(c)(1) and permit any affiliates of the Trust and Reorganized ICH to utilize Rule 144 as of the date that the registration under the Exchange Act becomes effective with respect to the Trust Interests or Reorganized ICH Common Stock, as applicable, provided that, with respect to the Trust Interests, 1934 Act registration of the Trust Interests, becomes effective prior to the first date after the Effective Date on which a report would have been required to be filed under Section 13 of the 1934 Act by the Trust had the Trust Interests been registered under the 1934 Act as of the Effective Date. We do not believe the foregoing proviso applies with respect to Reorganized ICH because Reorganized ICH already is subject to the reporting requirements of the 1934 Act and will be required to continue to comply therewith in order to maintain the availability of Rule 144. Our request is supported by the Staff's position in Management Assistance, Inc., supra; Care Centers Inc. (March 11, 1985).

Additionally, with respect to §1145 Underwriters, we believe that §1145 Underwriters (including §1145 Underwriters who are affiliates of the respective issuer) may resell Trust Interests and Reorganized ICH Common Stock, as applicable, pursuant to other available exemptions from registration under the 1933 Act, such as the "Section 4(1-½)" exemption, and that purchasers in any such transaction will not receive restricted securities (as defined in Rule 144). The Commission previously has recognized the availability of the Section 4(1-½) exemption in other contexts. SEC Release No. 33-6188 (Feb. 1, 1980), 1 Fed. Sec. L. Rep. (CCH) ¶ 1051, at 2073-28 n. 178. Furthermore, as noted above, Section 1145(c) provides that a distribution pursuant to Section 1145(a)(1) is deemed to be a public offering of the securities distributed. Therefore, §1145 Underwriters who receive Trust Interests or Reorganized ICH Common Stock distributed pursuant to the Joint Plan will not be deemed to have received restricted securities, and any purchasers from a §1145 Underwriter who is not an affiliate of the

respective issuer should not be deemed to have received restricted securities. Accordingly, we request that the Staff concur with our view that § 1145 Underwriters may resell Trust Interests or Reorganized ICH Common Stock, as applicable, pursuant to exemptions from registration under the 1933 Act that may be available, including the Section 4(1-½) exemption, and purchasers from a §1145 Underwriter who is not an affiliate of the respective issuer in such transactions will not receive restricted securities.

III. CONCLUSION

For the reasons set forth under the discussion above, we respectfully request that the Staff confirm our views as requested herein and advise that it will not recommend that enforcement action be taken if the Debtors complete the transactions contemplated by the Joint Plan and otherwise proceed in the manner outlined in this letter.

If you have any questions or require additional information regarding the foregoing, please contact the undersigned at (214) 745-5437. In addition, questions regarding the Trust may be directed to Ellen Curnes of Gibson, Dunn & Crutcher LLP at (214) 698-3110 or Messrs John F. Olson or Ronald O. Mueller of Gibson Dunn & Crutcher LLP at (202) 955-8500. As the Bankruptcy Court, by order entered February 7, 1997, confirmed the Joint Plan, we would appreciate a response to our request as soon as reasonably practicable. We also request that you advise us if you do not plan to respond affirmatively to this request or any portion thereof and allow us the opportunity to discuss with you, in advance of your formal written response, possible alternative courses of action which would permit the Debtors to achieve the relief requested herein.

In accordance with 1934 Act Release 6269 (December 5, 1980), an original and seven copies of this letter are submitted. An additional copy has been enclosed for you to stamp with the date of receipt and return to the undersigned in the envelope provided.

Thank you for your assistance.

Very truly yours,

WINSTEAD SECHREST & MINICK P.C.

By: 

Rodney L. Moore

RLM:kp

cc: Mark Green, Securities and Exchange Commission
Michael Hyatte, Securities and Exchange Commission
Sarah Wagman, Securities and Exchange Commission
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Daniel C. Stewart, Esq. (of the Firm)
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John F. Olson, Esq.
Charles M. Schwartz, Esq.
Selig D. Sacks, Esq.
Andrew M. Arsiotis, Esq.
Michael Markson, Esq.

ANNEX I

	<u>Event</u>	<u>Date of Event</u>
Form 8-K	Sale of Modern and Western	04/02/96
Form 8-K	March Operating Report	04/22/96
Form 8-K	April Operating Report	05/20/96
Form 8-K	Joint Plan of Orderly Liquidation	05/31/96
Form 8-K	May Operating Report	06/20/96
Form 8-K	Sale of PALICO	06/28/96
Form 8-K	June Operating Report	07/22/96
Form 8-K	July Operating Report	08/20/96
Form 8-K	August Operating Report	09/20/96
Form 8-K	September Operating Report	10/21/96
Form 8-K	October Operating Report	11/20/96
Form 8-K	November Operating Report	12/20/96
Form 8-K	December Operating Report	1/17/97