Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants believe the Funds would incur substantial unnecessary expenses if they were required to obtain shareholder approval of Money Manager changes deemed necessary for the effective functioning of TIP's multimanager program. Further, the delay associated with holding a meeting solely for this purpose would hamper FAI in performing its manager selection and

allocation duties.

- 3. TIP's multi-manager structure is prominently featured in its Prospectus and Statement of Additional Information. Descriptions of the criteria used by FAI to select Money Managers and to establish appropriate compensation structures for the Money Managers, as well as descriptions of each Money Manager, are included in TIP's Prospectus and Statement of Additional Information.1
- 4. Given TIP's multi-manager structure, a decision to hire a new Money Manager for the TIP Funds is closely analogous to the decision by a money management firm to hire another portfolio manager or analyst. Under TIP's investment advisory agreements, the duties and responsibilities of a Money Manager employed by TIP is limited to the management of a defined portion of a Fund's assets allocated to the Money Manager by FAI. No Money Manager has responsibility for the ongoing administration and corporate maintenance of TIP or for the servicing of its shareholders, those functions being exclusively the responsibility of FAI and AMT Capital Services, Inc., which acts pursuant to contract with TIP as administrator and distributor of the TIP Funds.
- 5. The relationship between FAI acting on behalf of TIP on the one hand, and a Money Manager on the other, is entirely at arm's length. The Money Managers employed by TIP have not sponsored the TIP Funds. The order will be conditioned to ensure that there can

be no officer or director of TIP or FAI who will own (other than through a pooled investment vehicle) any interest in a Money Manager except for ownership of less than 1% of the outstanding securities of a publiclytraded company that is a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested exemption will be subject to the following conditions:

- 1. FAI will not enter into a Money Manager contract with any Money Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of TIP or FAI other than by reason of serving as a Money Manager to one or more of the Funds (an "Affiliated Money Manager") without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable
- 2. At all times, a majority of the directors of TIP will be persons each of whom is not an "interested person" of TIP (as defined in section 2(a)(19) of the Act) (the "Independent Directors"), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.
- 3. When a Money Manager change is proposed for a Fund with an Affiliated Money Manager, the directors of TIP, including a majority of the Independent Directors, will make a separate finding, reflected in TIP's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which FAI or the Affiliated Money Manager derives an inappropriate
- 4. FAI will provide general management and administrative services to TIP, and, subject to review and approval by TIP's directors, will: (a) set the Funds' overall investment strategies; (b) select Money Managers; (c) allocate and, when appropriate, reallocate the Funds' assets among Money Managers; (d) monitor and

- evaluate the performance of Money Managers; and (e) ensure that the Money Managers comply with TIP's investment objectives, policies, and restrictions.
- 5. New Funds of TIP created after the issuance of the order will disclose their reliance on the order in their prospectuses and will have such reliance approved by consent of their sole shareholder.
- 6. Within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Money Manager contract, FAI will furnish shareholders all information about a new Money Manager or Money Manager contract that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in the Fund's Money Manager contract. FAI will meet this condition by providing shareholders, within 60 days of the hiring of the Money Manager or the implementation of any material change to the terms of a Money Manager contract, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). The information statement also will meet the requirements of Schedule 14A under the Exchange Act.
- 7. No director or officer of TIP or FAI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Money Manager except for: (a) ownership of interests in FAI or any entity that controls, is controlled by, or is under common control with FAI; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.
- 8. TIP will disclose in all prospectuses relating to any Fund the existence, substance, and effect of any order granted pursuant to the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-19716 Filed 8-9-95; 8:45 am] BILLING CODE 8010-01-M

¹ Since TIP commenced operations in May 1994, it has disclosed in its prospectus that it was seeking an exemptive order from the SEC exempting it from the requirement that each agreement between TIP and a Money Manager be approved by a vote of a majority of the shareholders of the affected Fund.