



JUL 01 1989

Our Ref. No. 89-319-CC
Putnam Diversified
Premium Income Trust
File No. 811-5800

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

By letter of May 23, 1989, you asked us to concur in your view that loan participations that Putnam Diversified Premium Income Trust ("Fund") will invest in are securities within the meaning of section 2(a)(36) of the Investment Company Act of 1940 ("1940 Act"). As more fully described in your letter, these loan participations typically will be participating interests purchased from banks in a loan made by a syndicate of banks, represented by an agent bank that has negotiated and structured the loan, to corporate borrowers to finance internal growth, mergers, acquisitions, stock repurchases, leveraged buy-outs, and other corporate activities. The loan participations may extend for the entire term of the loan or only for short "strips" that correspond to a quarterly or monthly floating rate interest period on the loan. They may take the form of (1) a true assignment or novation that shifts to the assignee the direct debtor-creditor relationship with the corporate borrower, or (2) a participating interest that does not shift the debtor-creditor relationship to the assignee, who must rely on the original lender to collect sums due and otherwise to enforce its rights against the corporate borrower or the agent bank that administers the loan.

You point out that the loan participations possess risk attributes that "strongly suggest" that they be treated as securities, including the risk of insolvency of the corporate debtor or the issuing bank, or both, and the risk that the corporate debtor will prepay principal if interest rates fall. Except for its investigation of the creditworthiness of the corporate borrower, the Fund will have no involvement in the commercial transactions underlying the original loans. In addition, the Fund will purchase loan participations solely for investment purposes. While you explicitly take no position with respect to the proper characterization of loan participations under the Securities Act of 1933 and the Securities Exchange Act of 1934, you are of the opinion that loan participations, when purchased as an investment instrument by a company otherwise investing in securities and holding itself out as an investment company, should be treated as securities for purposes of the 1940 Act. In these circumstances, you believe it appropriate to rely on the plain meaning of the statutory definition, rather than on the phrase, in section 2(a), "unless the context otherwise

requires." We agree with you that loan participations are securities for purposes of the 1940 Act. 1/

In addition, you request our assurance that we will not recommend any enforcement action to the Commission if the Fund invests more than 25% of its assets in loan participations and continues to hold itself out and operate as a diversified company. Section 5(b)(1) of the 1940 Act defines the term "diversified company" to mean a management company that meets the requirements that

At least 75 per centum of the value of its total assets is represented by . . . securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company

On the basis of the representations in your letter, particularly that the Fund intends to treat both the corporate borrowers and the banks selling participating interests as issuers for purposes of the restriction prohibiting investment of more than 5% of its assets in the securities of any one issuer, 2/ we would not recommend any enforcement action to the Commission under the 1940 Act if the Fund proceeds as described.

Elizabeth T. Tsai (by T.S. Hanan)

Elizabeth T. Tsai
Special Counsel

-
- 1/ Section 2(a)(36) of the 1940 Act states that, when used in the Act, unless the context otherwise requires, "security" means "any note . . . evidence of indebtedness, transferable share, investment contract . . . or any certificate of interest or participation in . . . any of the foregoing."
- 2/ This would mean that if 75% of the Fund's assets were invested in participating interests that do not shift to the Fund the direct debtor-creditor relationship with the corporate borrower, the Fund would be required to be diversified at both the corporate borrower and the lending institution levels for purposes of section 5(b)(1), that is, it would invest in participation interests involving at least 15 corporate borrowers and 15 banks.