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A PARTNERSHIP CONSISTING OF INDIVIDUALS AND PROFESSIONAL CORPORATIONS

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Section	18(f)	CABLE: GORDLEX, N.Y. TELEX: 147206 TELECOPIER: 697-5110
File		
Public		C. LEONARD GORDON, P.C. PETER A. BAUER COUNSEL
Availability	9/14/84	

July 9, 1984

(MEMBER CAL. BAR ONLY)

Sidney L. Cimmet, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

1940 Act/Section 18(f)
1940 Act/Section 17(f)

Re: Pilot Fund, Inc.

Dear Mr. Cimmet:

On behalf of Pilot Fund, Inc. (the "Fund") we request the advice of the Division of Investment Management (the "Division") that it will not deem the Fund to be an issuer of senior securities in contravention of Section 18(f) of the Investment Company Act of 1940 (the "Act"), if it engages in certain commodity trading practices, as described below. In addition, we request the advice of the Division that the Fund's custodial arrangements with regard to its transactions in futures contracts, described in more detail below, comply with Section 17(f) of the Act.

BACKGROUND

The Fund is registered with the Securities and Exchange Commission (the "Commission") as an open-end, diversified, management investment company. It was incorporated in the State of Texas on April 15, 1966. As of June 29, 1984, the Fund had 8,096,579 shares of common stock outstanding and approximately 16,010 shareholders. Its net asset value on June 29, 1984 was approximately \$7.70.

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Attached hereto as Exhibit A is a copy of Post-Effective Amendment Number 32 to the Fund's Registration Statement under the Securities Act of 1933 and Amendment Number 8 under the Investment Company Act of 1940, which was filed with the Commission on July 9, 1984 (the "Prospectus"). The attached Registration Statement, which is subject to the review of the Commission's staff, reflects the Fund's proposed use of stock index futures and options on stock index futures.

The Fund's primary investment objective is capital appreciation through investment in relatively few groups of industries which are expected to benefit from significant new developments. The Fund may purchase any type of security but generally seeks to achieve its objective through ownership of common stocks, preferred stocks, or debt securities convertible into (or rights or warrants representing the right to acquire) common stocks. In addition, in pursuit of its objective, the Fund may engage in certain special investment practices, including the borrowing of money from banks to purchase investment securities to the extent permitted by Section 18(f) of the Act.* The Fund may also engage to a limited extent in the purchase and writing of put and call options traded on national securities exchanges. All writing transactions must be covered.** The Board of Directors of the Fund recently approved a change in the Fund's fundamental investment policies to permit the Fund, within certain limits more fully described below, to purchase and sell stock index futures contracts and to purchase options on stock index futures for the purpose of hedging against adverse changes in the value of its actual or anticipated securities positions.*** This proposal will be submitted to Fund shareholders for approval or disapproval at a shareholders' meeting to be held on August 22, 1984.

* See page 11 of the Prospectus.

** See pages 12 through 13 and page 14 of the Prospectus.

*** The Fund may not write options on futures.

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The Fund has requested an interpretative letter from the Commodity Futures Trading Commission ("CFTC") that such activities will not lead to a determination that the fund is a "pool" under the CFTC's regulations* and that the Fund's investment adviser, Criterion Funds, Inc., will not be deemed a "commodity pool operator" for purposes of the Commodity Exchange Act ("CEA").** The CFTC has granted similar letters to other investment companies engaging in commodity trading activities similar to those for which the Fund seeks approval.***

DISCUSSION

A. Section 18(f)

Section 18(f) of the Act provides that "[i]t shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer," except for bank borrowings under certain conditions. In this regard, to the extent that investments in stock index futures contracts and options on such contracts are deemed to involve the issuance of a senior security, the Fund's purchases and sales of such contracts could raise questions under Section 18(f) of the Act. The Division has indicated, however, that it would not object to

* 17 C.F.R. §4.10(d) (1983).

** 7 U.S.C. §2 (1982).

*** See, e.g., Letter re Prudential - Bache Option Growth Fund, Inc. (avail. September 13, 1983). The CFTC has proposed an exemptive rule which would eliminate the need for the "not a pool" letters referred to previously. The Fund has undertaken to the CFTC that it will comply with any exemptive rule ultimately adopted. In the event that a final rule contains restrictions on commodity trading practices that are less restrictive than those criteria previously set forth by the Division, the Fund will undertake to comply, at minimum, with the Division's standards.

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any investment company's use of commodity futures contracts for hedging purposes, provided that such transactions were effected in accordance with certain specified parameters which are designed to ensure that the speculative character of the fund is not increased, as a result of the commodity futures transactions.*

In particular, the Staff has indicated that it would not recommend action to the Commission under Section 18(f) of the Act with respect to the trading of commodity futures contracts by an investment company for hedging purposes if "(1) long hedges are collateralized with cash or cash equivalents equal to the market value of the futures contract purchased and (2) the hedging transactions are within limits which are consistent with the purposes of hedging, i.e., reducing risk."** The Fund has proposed to adopt a set of limitations which in our opinion meet the criteria imposed by the Staff. These limitations are as follows:

(1) Collateralization

In all instances involving the purchase of stock index futures contracts by the Fund, an amount of cash and cash equivalents, equal to the market value of the futures contracts, will be deposited in a segregated account with the Fund's custodian, or in a margin account with a broker to collateralize the position and thereby insure that the use of such futures is unleveraged. These assets will collateralize no other transaction.***

* See, e.g., Letter re Pension Hedge Fund, Inc. (pub. avail. January 20, 1984) ("Pension Hedge Letter"); Letter re SteinRoe Bond Fund, Inc. (pub. avail. January 17, 1984) ("SteinRoe Letter"); Letter re IDS Bond Fund, Inc. (pub. avail. April 11, 1983).

** Pension Hedge Letter; SteinRoe Letter.

*** See page 24 of the Fund's Statement of Additional Information.

(2) Limitations on Hedging Transactions

The Fund will purchase and sell stock index futures and options on such futures only for bona fide hedging purposes. As stated in the attached Prospectus, the Fund will trade in such commodities "only as a hedge against changes resulting from market conditions in the value of securities held in the Fund's portfolio or which it intends to purchase and where the transactions are economically appropriate to the reduction of risks inherent in the ongoing management of the Fund".*

In addition, as stated in the attached Prospectus, "the amount of initial margin deposits on stock index futures contracts plus the premiums paid for options on such contracts will at no time exceed 5% of the Fund's total assets". Furthermore, as also stated in the Prospectus, "[t]he Fund may not purchase or sell stock index futures or purchase options on such futures if immediately thereafter more than one-third of its net assets would be hedged".**

In our view, the limitations described above are well within the parameters the Staff has previously recognized as ensuring that a fund's use of stock index futures and related options will be for "bona fide hedging purposes". Accordingly, it is our opinion that the Fund's use of commodity contracts should not be deemed to involve the issuance of a senior security in contravention of Section 18(f) of the Act.

B. Section 17(f)

Section 17(f) of the Act requires that "[e]very registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of [the Act]" Section 26(a)(1), in turn, prescribes minimum size requirements for

* See page 15 of the Prospectus.

** See page 15 of the Prospectus.

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Page 6

banks serving as custodians for investment companies. Requirements for the purchase and sale of stock index futures and related options, however, involve custody arrangements which could raise questions under Section 17(f) of the Act. Relevant rules require, for example, that for each futures contract entered into, the Fund deposit with its broker an amount of cash or U.S. Treasury bills equal to approximately 5% of the contract amount. In addition, the Fund may have to make further payments into its account to reflect daily variations in gains and losses on open contracts.

The Division has indicated in previous letters that it would not object to custody arrangements for the deposit of margin payments on futures contracts, provided that certain requirements were met. Specifically, the Division has indicated that it would not recommend action to the Commission if: (1) a margin account was established with its bank custodian in the name of a fund's Futures Commission Merchant ("FCM"); (2) all amounts deposited in excess of required margin were withdrawn by the fund; and (3) the FCM were required to state that all conditions precedent to its right to direct disposition of amounts held in the account have been satisfied before it gains access to the account. In addition, gains due to the fund at the end of a clearing corporation's trading day must be paid to the fund no later than the next business day.*

The Fund proposes to enter into an arrangement with each FCM through which it effects futures transactions to hold initial and variation margin payments which will satisfy both the requirements of Section 17(f) of the Act and Section 4d of the CEA.** As proposed, each such arrangement will provide the following:

* Pension Hedge Letter; SteinRoe Letter; Letter re Claremont Capital Corp. (pub. avail. September 16, 1979).

** Section 4d of the CEA, 7 U.S.C. §6d (1982), governs the custody of a client's funds by an FCM. The CFTC, in an

[footnote continued on following page]

(1) Maintenance of a Custodial Account

The Fund will establish a custodial account with its bank custodian to hold initial margin payments. Such account will be in the name of the FCM through which the Fund effected the futures transaction. The FCM will agree that assets in the account will at all times be maintained with the custodian unless released to the Fund or otherwise disposed of as provided in the Fund's agreement with the FCM. Prior to disposing of assets in the account, the FCM will be required to state that all conditions precedent to its right to dispose of assets in the account are satisfied.

(2) Daily Changes in Required Margin

The Fund will agree to pay to the FCM, and the FCM will agree to pay to the Fund, amounts equal to any change in the value of the Fund's open futures contracts, on a daily basis.

(3) Payments by or to the Fund

The FCM will notify the Fund, after the close of trading each business day, of the amount or margin owed to or payable by the Fund no later than by 10:30 A.M. the next business day. All payments by the FCM to the Fund would be paid to the Fund's custodian.

In addition to the foregoing, it is the Fund's intent that anytime the balance in the bank custodial account exceeds the required margin, the Fund will withdraw that excess promptly.

[footnote continued from preceding page]

interpretative release, has set forth guidelines covering, among other things, margin arrangements with investment companies. CFTC Financial and Segregation Interpretation No. 10, reprinted in, 16 BNA Sec. Reg. & L. Rep. 993 (June 1, 1984). The Fund will enter into an arrangement meeting the guidelines set forth in that release.

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In our view, the specific custodial arrangements proposed by the Fund meet the guidelines set forth by the Division in previous letters. As a result, it is our opinion that such arrangements comply with Section 17(f) of the Act.

CONCLUSION

In view of the foregoing, we request the advice of the Division that the Fund will not be deemed to be issuing senior securities in violation of Section 18(f) of the Act by virtue of its transactions in stock index futures and options on such futures. In addition, we request the advice of the Division that the custodial arrangements proposed by the Fund with regard to its transactions in futures contracts comply with Section 17(f) of the Act. If you should have any questions regarding this request, please contact the undersigned or Jeffrey A. Mazer, Esq. at the address and telephone number set forth above.

Very truly yours,



Stuart M. Strauss

GORDON HURWITZ BUTOWSKY WEITZEN SHALOV & WEIN

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C. LEONARD GORDON, P. C.

PETER A. BAUER
COUNSEL

²(MEMBER CAL. BAR ONLY)

July 31, 1984

Stephanie L. Monaco, Esq.
Office of the Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

1940 Act/Section 18(f)
1940 Act/Section 17(f)

Re: Pilot Fund, Inc.

Dear Ms. Monaco:

This letter is intended to supplement our earlier letter dated July 9, 1984 addressed to Sidney L. Cimmert, Esq. in which we requested certain "no action" assurances in connection with the proposed use by Pilot Fund, Inc. (the "Fund") of stock index futures and options on stock index futures contracts for the purpose of hedging against adverse changes in the value of its actual or anticipated securities positions. It is being sent in response to your request made in our telephone conversation of July 24, 1984 for clarification of the circumstances under which a futures commission merchant ("FCM") through which the Fund effects transactions would be entitled to gain access to the custodial account the Fund will establish in the FCM's name with its custodian bank.

This will confirm that the only circumstance under which an FCM will be permitted to gain access to such account is upon a default by the Fund in making margin payments in accordance with the terms of the Fund's contract with the FCM. Furthermore, as a condition precedent to its right to access the account, the FCM will be required to represent to the custodian that the Fund has in fact defaulted on its obligation to make margin payments.

Stephanie L. Monaco, Esq.
Securities and Exchange Commission
July 31, 1984
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If you have any further questions or comments, please
contact the undersigned or Jeffrey A. Mazer, Esq.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stuart M. Strauss".

Stuart M. Strauss

SMS:Ara

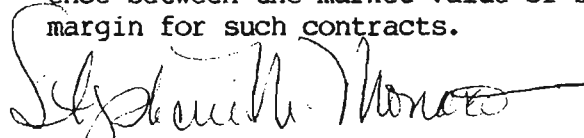
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AUG 15 1984

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 84-214-CC
Pilot Fund, Inc.
File No. 811-1387

We would not recommend any action to the Commission against the Pilot Fund, Inc. (the "Fund"), a registered open-end management investment company, for violations of sections 18(f) and 17(f) of the Investment Company Act of 1940 if the Fund proceeds as described in your letters of July 9 and July 31, 1984. Our position is based on the facts and representations contained in those letters, as well as the oral representation made to me by Stuart Strauss of your office on August 13, 1984, that when the Fund purchases stock index futures contracts it will segregate with its custodian cash or cash equivalents equal to the difference between the market value of such contracts and the amount deposited as margin for such contracts.



Stephanie M. Monaco
Attorney