ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624
(617) 951-7000
TELECOPIER: (617) 951-7050

30 KENNEDY PLAZA
PROVIDENCE, R. I. 02903
(401) 455-4400
TELECOPIER: (401) 455-4401

1001 PENNSYLVANIA AVENUE, N. W.
SUITE 1200 SOUTH
WASHINGTON, D. C. 20004
(202) 626-3900
TELECOPIER: (202) 626-3961

WRITER'S DIRECT DIAL NUMBER: (617) 951-7389

April 3, 1995

ACT ICA
SECTION 18(f)
RULE
PUBLIC AVAILABILITY 8/24/95

1940 Act
Section 18(f)

Via Federal Express

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

Re: Robertson Stephens Investment Trust

Dear Mr. Murphy:

We are writing on behalf of Robertson Stephens Investment Trust (the "Trust") (File Nos. 33-16439; 811-5159) and Robertson Stephens Investment Management, the Trust's investment manager ("RSIM"), to request assurance that the Staff of the Securities and Exchange Commission will not recommend enforcement action if the Trust changes its investment policies as described below. The investment policies relate to the asset segregation practices to be followed by the Trust in respect of short sales entered into by it.

Background

The Trust is an open-end, series management investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust currently offers shares of beneficial interest in four series: the Robertson Stephens Contrarian Fund, the Robertson Stephens Emerging Markets Fund, the Robertson Stephens Emerging Growth Fund, and the Robertson Stephens Value + Growth Fund (the "Funds").

Each of the Funds, other than the Emerging Growth Fund, is permitted to engage in short sales. When a Fund enters into a short sale, it places an order to sell a security which typically it does not own. In order to meet its settlement obligation, the Fund borrows the security in question from a broker and then delivers it to its counterparty in settlement of the

short sale. The Fund is obligated to return the borrowed security to the broker at a (typically unspecified) time in the future. At that time, the Fund purchases a replacement security in order to effect the return. The transaction will be profitable to the Fund if the price of the security at the time it is replaced is less than at the time the short sale was entered into (assuming that the difference in price is greater than the amount of any costs incurred by the Fund in respect of the short sale). On the other hand, if the market value of the security is greater at the time of replacement than at the time of the short sale, the transaction will result in a loss to the Fund.

The Trust's prospectus provides that a Fund may not enter into a short sale at any time if, immediately after and as a result of the short sale, the market value of securities sold short by the Fund would exceed 25% of the value of the Fund's total assets.

When a Fund enters into a short sale, it is required to inform the broker that the sale is "short". The broker typically requires that the Fund leave the proceeds of the short sale with the broker as collateral, and post with the broker an additional amount equal to 50% or more of the value of the security sold short.

The Trust's Statement of Additional Information currently provides that, at any time when a Fund has an open short sale position, the Fund is required to segregate with its custodian an amount of cash or U.S. Government securities or other high-grade liquid debt securities equal to the difference between (i) the current market value of the securities sold short and (ii) any cash or U.S. Government securities required to be deposited with the broker in connection with the short sale (not including the proceeds from the short sale). The Statement of Additional Information also provides that the total amount of cash or U.S. Government securities deposited with the broker (not including the proceeds of the short sale) and segregated by the Fund with the Trust's custodian may not at any time be less than the market value of the securities sold short at the time the short sale was entered into.

The proposed change in investment policies

For the reasons stated below, the Trust is proposing to change its investment policies by deleting the policy set forth in the last sentence of the preceding paragraph, so that the amount of a Fund's segregation requirement in respect of the short sale of a security will be determined without reference to the value of the security at the time the short position was opened (the "opening value" of the security). As a result, the Trust will be required, in respect of any short sale, to segregate with its custodian at all times an amount of cash, U.S. Government securities, and other high-grade liquid debt securities equal to the excess of the current market value, as

calculated on a daily basis, of the securities sold short over the amount of collateral deposited with the broker in respect of the short sale (not including the proceeds of the short sale).

The legal framework

Section 18(f) of the 1940 Act makes it unlawful "for any registered open-end company to issue any class of senior security . . ., except that [it may] borrow from any bank." On a number of occasions, the Commission and the staff have stated their view that various financial instruments providing investment leverage (including short sales of securities) constitute senior securities, because, among other reasons, "each poses a risk of loss to an investment company analogous to the danger caused by leverage, which is discussed throughout the legislative history of the [1940] Act." The Commission advised, however, in Investment Company Act Release No. 10666 (April 18, 1979) ("Release 10666") that it would not consider such a financial instrument to constitute a senior security if the fund in question were to establish a segregated account and maintain in the account cash and high grade securities in an amount calculated to counteract the leverage provided by the financial instrument. The Commission and the staff have detailed the segregation requirements applicable to various types of financial instruments, both in Release 10666 and in subsequent no-action letters. See, e.g., Sanford C. Bernstein (pub. avail. June 25, 1990); Dreyfus Strategic Income (pub. avail. June 22, 1987); Continental Option Income Plus Fund (pub. avail. August 12, 1985); SteinRoe Bond Fund, Inc. (pub. avail. January 17, 1984).

Segregation requirements applicable to short sales. Guide 9 to Form N-1A describes the staff's position regarding segregation requirements for short sales:

> "The staff has taken the position that in order to comply with the provisions of Section 18, the selling registrant must put in a segregated account . . . an amount . . . equal to the difference between: (a) the market value of the securities sold short at the time they were sold short, and (b) any cash or United States government securities required to be deposited as collateral with the broker in connection with the short sale (not including the proceeds from the short sale). In addition, until the registrant replaces the borrowed security, it must daily maintain the segregated account at such a level that (1) the amount deposited in it plus the amount deposited with the broker as collateral will equal the current market value of the securities sold short, and (2) the amount deposited in it plus the amount deposited with the broker as collateral will not be less than the market value of the securities at the time they were sold short."

The Guide cites to Investment Company Act Release 7221, Guidelines for the Preparation of Form N-8B-1 (June 9, 1972), which provides similarly. See also Investment Company Act

Release No. 7220, Guidelines for the Preparation of Form S-4 and S-5 (June 9, 1972); Dreyfus Strategic Income (pub. avail. June 22, 1987).

RSIM believes that the requirement set out in clause (2) of Guide 9 and in the Trust's Statement of Additional Information is inconsistent with the purpose of the segregation requirement generally and with segregation requirements imposed with respect to other types of leveraged instruments. When a fund enters into a short sale, the amount of its obligation to the broker is, at that moment, equal to the current market price of the security. Thereafter, the amount of the fund's obligation to replace the security -- and so the value of any "senior security" created by the short sale -- varies depending solely upon changes in the value of the security; it may be more or less than the opening value of the security. The Trust and RSIM believe that the segregation requirement for short sales should similarly be determined by reference only to the value of the underlying security as it varies over time, and not by reference to the opening value of the security.

The segregation requirement promulgated by the staff for call options written by a fund reflects precisely this approach. (A fund's exposure to the short position created by a call option is, as an economic matter, equivalent to its exposure under a short sale.) In Investment Company Act Release 7221, Guidelines for the Preparation of Form N-8B-1 (June 9, 1972), the Commission stated that a fund writing a call option must provide that:

> "(1) it will own at the time of selling the option, or will purchase as soon thereafter as practicable, and hold for the term of the option, the securities (or securities convertible into the securities without additional consideration) against which call options are written, or (2) it will purchase a call on the same securities at the same price, or (3) it will establish, at the time of selling the option, and maintain for the term of the option, a segregated account consisting of cash, U.S. government securities or high-grade debt securities, equal to the fluctuating market value of the optioned securities. Such a segregated account should be adjusted at least once a day to reflect changes in the market value of the optioned security."

That segregation requirement in clause (3) reflects the fact that the amount of any leverage or "senior security" created by the fund's short position in the option is measured by reference to the value of the optioned security as it varies over time, without reference to the value of the security at the time the option was sold.[1]

---

[1]The staff reiterated this position in Sanford C. Bernstein (pub. avail. June 25, 1990), at note 2. In an earlier letter, Dreyfus Strategic Income (pub. avail. June 22, 1987), the staff had

By contrast, the position on short sales set forth in Guide 9 to Form N-1A in respect of short sales leads to the following anomaly, which is almost certainly not in the best interests of investment funds or their shareholders. If a fund enters into a short sale when the security in question is worth $100, and the value of the security subsequently drops to $50, the fund is required to continue to segregate assets worth $100, even though it could satisfy its delivery obligation by the payment of $50. Alternatively, the fund might close out the short sale, enter into another short sale of the same security with the same broker, and be required to segregate only $50. The economics of the two short positions is exactly the same (other than, in the first case, the opportunity cost to the fund of maintaining assets in the segregated account and, in the second case, the recognition of any taxable gain or loss). The fund is thus in the unfortunate position of being required to pay brokerage costs (to close out the one short sale and enter into the second) simply to avoid the segregation requirement.

For these reasons, the Trust and RSIM propose to modify the segregation requirement applicable to short sales entered into by the Funds to require that a Fund segregate in respect of any short sale an amount equal to the excess of the current market value of the security sold short over the amount of collateral deposited with the broker in respect of the short sale (not including the proceeds of the short sale), without reference to the opening value of the security. A Fund would value the security daily in accordance with the procedures established by the Trust's Trustees for valuing the Fund's "long" investments, and the segregated account will be marked to market daily to reflect changes in the value of the security. The Fund's segregation requirement would be reduced to an amount below the opening value of the security in question, if the value of the security were to fall below the opening value. The Fund's segregation requirement would similarly be increased above the opening value, if the value of the security were to rise above that level.

---

appeared to take a different position. In that letter, the staff wrote that a fund which sells a call option must segregate an amount equal to the market value of the security underlying the option, but not less than the strike price of the option.

If you have any questions, please feel free to call the undersigned, or Davi G. Carsen of this office (617-951-7805).

Very truly yours,

Timothy W. Diggins

TWD/dgc:3036097.05

cc: Mr. Terry R. Otton
Davi G. Carsen, Esq.

PUBLIC

AUG 24 1995

Our Ref. No. 95-190-CC
Robertson Stephens
Investment Trust
File No. 811-5159

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

By letter dated April 3, 1995, you seek assurance that the staff would not recommend enforcement action to the Commission under Section 18(f) of the Investment Company Act of 1940 (the "1940 Act") if the series funds that constitute the Robertson Stephens Investment Trust (the "Trust") segregate assets to cover short sales in the manner described below.

The Trust is an open-end series management investment company registered under the 1940 Act. The Trust offers shares of beneficial interest in four series funds (each a "Fund"): the Robertson Stephens Contrarian Fund, the Robertson Stephens Emerging Markets Fund, the Robertson Stephens Emerging Growth Fund (the "Emerging Growth Fund"), and the Robertson Stephens Value + Growth Fund.

Each of the Funds, other than the Emerging Growth Fund, is permitted to engage in short selling. You state that when a Fund enters into a short sale, it places an order to sell a security that, typically, it does not own. In order to meet its settlement obligation, the Fund borrows the security in question from a broker and then delivers it to its counterparty in settlement of the short sale. The Fund is obligated to return the borrowed security to the broker at a time, usually unspecified, in the future. At that time, the Fund purchases a replacement security in order to effect the return. The transaction will be profitable to the Fund if the price of the security at the time it is replaced is less than the price of the security at the time the short sale was entered into (assuming that the difference in price is greater than the amount of any costs incurred by the Fund in respect of the short sale). If the market value of the security is greater at the time of replacement than at the time of the short sale, the transaction will result in a loss to the Fund.

You state that when a Fund enters into a short sale, it is required to inform the broker that the sale is "short." The broker typically requires the Fund to post with it as collateral the proceeds of the short sale plus an additional amount equal to 50% or more of the value of the security sold short.

Section 18(f)(1) of the 1940 Act generally makes it unlawful for a registered open-end investment company to issue a "senior security," except that the investment company may borrow from a bank if the investment company maintains asset coverage of at least 300 percent. Section 18(g) defines a "senior security" to include, in part, any obligation or instrument constituting a security and evidencing indebtedness. The Commission and staff

have stated that a short sale involves the creation of a senior security subject to the limitations of Section 18.[1]

In Guide 9 to Form N-1A, the staff stated that to avoid senior security problems arising under Section 18, a registrant engaging in short selling must put in a segregated account an amount equal to the difference between: (a) the market value of the securities sold short at the time they were sold short (the "opening value"), and (b) any cash or United States government securities required to be deposited as collateral with the broker in connection with the short sale (not including the proceeds from the short sale). In addition, until the registrant replaces the borrowed security, it must maintain the segregated account, on a daily basis, at such a level that (1) the amount segregated plus the amount deposited with the broker as collateral will equal the current market value of the securities sold short, and (2) the amount deposited in it plus the amount deposited with the broker as collateral will not be less than the market value of the securities at the time they were sold short.[2] The value of U.S government securities or other assets in the segregated account should be marked to the market daily, and additional assets should be placed in the segregated account whenever the sum of the market value of the segregated account plus the market value of the amount on deposit with the broker as collateral falls below the amounts required to be maintained (i.e, the greater of the current market value of the security sold short or the market value of that security at the time the transaction was entered into).[3]

You believe that the requirement in Guide 9 that the amount deposited in the segregated account plus the amount deposited with the broker as collateral at all times not be less than the market value of the securities at the time they were sold short is inconsistent with the purpose of the segregation requirement generally and with segregation requirements imposed with respect to other types of leveraged instruments. You state that when a fund enters into a short sale, the amount of its obligation to the broker is, at that moment, equal to the current market price of the security. Thereafter, the amount of the fund's obligation to replace the security -- and the value of any "senior security" created by the short sale -- varies depending solely upon changes in the value of the security; it may be more or less than the

---

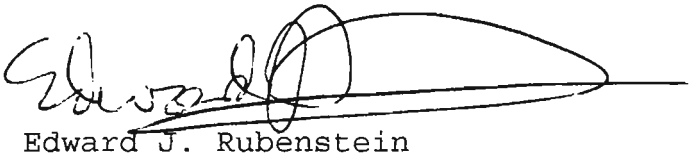
1 See Investment Company Act Release No. 10666 (Apr. 18, 1979)("Release 10666"); Guide 9 to Form N-1A; and Dreyfus Strategic Investing and Dreyfus Strategic Income (pub. avail. Jun. 22, 1987)("Dreyfus").

2 See also Dreyfus.

3 Guide 9 to Form N-1A; Release 10666.

opening value of the security. You maintain that the segregation requirement for short sales should similarly be determined by reference only to the value of the underlying security as it varies over time, and not by reference to the opening value of the security.

We would not recommend that the Commission take enforcement action under Section 18(f) of the 1940 Act if a Fund that engages in short selling maintains in a segregated account on the books of its custodian an amount that, when combined with the amount of collateral deposited with the broker in connection with the short sale, equals the current market value of the security sold short. Because this response is based on the facts and representations in your letter, different facts or representations may require a different conclusion.



Edward J. Rubenstein
Senior Counsel