ACT ICA of 1940
SECTIONS 17(f), 18(f)
RULE
PUBLIC AVAILABILITY 11-25-97

PUBLIC

Our Ref. No. 97-366-CC
The Brinson Funds, et al.
File No. 811-6673

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated November 24, 1997 requests our concurrence with your view that a mutual fund may include, as part of its total assets, the assets that it receives as collateral for loans of its portfolio securities, for purposes of determining compliance with the staff's position that a mutual fund should not have on loan at any given time securities representing more than one-third of its total asset value.

It is not uncommon for a mutual fund to loan a portion of its securities portfolio to third parties as a method of generating additional income. As a general matter, securities lending arrangements are regulated under Section 17(f) of the Investment Company Act of 1940, which governs custody arrangements. In a number of no-action letters, the staff has taken the position that the usual custody requirements of Section 17(f) and the rules thereunder do not apply to securities on loan, provided that the securities are loaned in accordance with certain specified guidelines.1/ One of the guidelines is that a fund may not have on loan at any given time securities representing more than one-third of its total assets.2/

The one-third of total asset value guideline is derived from Section 18(f) of the Investment Company Act. Section 18(f) prohibits an open-end fund from issuing any class of senior security, except that a fund may borrow from a bank if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the fund. The staff has stated that a fund's loan of portfolio securities may involve the issuance of a senior security in light of the fund's obligation to return the collateral upon termination of the loan.3/ Thus, the staff takes the position that the 300% asset coverage requirement for bank borrowings contained in Section 18(f) also should apply to a fund's loan of its portfolio securities.4/ The one-third of total asset value guideline is intended to ensure that funds comply with the 300% asset coverage requirement when lending portfolio securities.

1/ *See, e.g.*, Salomon Brothers (pub. avail. May 4, 1975) ("*Salomon*"); State Street Bank & Trust Co. (pub. avail. September 29, 1972); State Street Bank & Trust Co. (pub. avail. Jan. 29, 1972).

2/ *See, e.g.*, Sife Trust Fund (pub. avail. Feb. 17, 1982); *Salomon, supra* note 1.

3/ *Salomon, supra* note 1. *See also* Montgomery Street Income Securities, Inc., Inv. Co. Act Release Nos. 9686 (Mar. 21, 1977) (notice) and 9726 (April 19, 1977) (order).

4/ *Salomon, supra* note 1.

You seek our concurrence with your view that the assets received by a fund as collateral for securities loaned should be included as fund assets in determining whether the fund has loaned securities representing more than one-third of its total assets. Because the one-third of total asset value guideline that applies to a fund's securities lending activities is derived from Section 18(f), we believe that the guideline should be interpreted consistently with the staff's interpretation of Section 18(f).

In DataConcepts Fund, Inc. (pub. avail. Aug. 25, 1980) *("DataConcepts")*, the staff interpreted Section 18(f) to permit a fund to borrow money from a bank in an amount up to 50% of its asset value *before* the borrowing.5/ Although the staff in *DataConcepts* did not state how it reached this conclusion, it seems clear that the staff considered the money borrowed from the bank to be an asset of the fund. Thus, a fund with $100 million in assets could borrow $50 million (or 50% of its asset value before the borrowing) without violating Section 18(f), because the fund would then have total assets of $150 million, which provides 300% asset coverage for the $50 million borrowing.

Under the staff's interpretation of Section 18(f) in *DataConcepts*, when a fund borrows money, the loan proceeds (*i.e.*, the cash that the fund is obligated to return) can be included as part of the fund's total assets in calculating the percentage of asset coverage for the borrowing. Similarly, we conclude that when a fund lends its portfolio securities, the collateral (*i.e.*, the cash or securities that the fund is obligated to return) can be included as part of the fund's total assets in calculating the percentage of the fund's total assets on loan.6/

5/ The staff in *DataConcepts* stated that: "Congress determined that the only senior securities [an open-end fund] may issue are those issued in connection with bank borrowings, and then only to the extent that such borrowings at no time exceed 50 percent of the investment company's assets before the borrowing."

6/ The position adopted here applies to all forms of collateral -- cash, U.S. Treasuries, etc. -- regardless of whether those instruments are treated as assets of the lending fund for accounting purposes.

This position represents the staff's views on whether loan collateral constitutes a fund asset solely for purposes of determining compliance with the one-third of total asset value guideline that applies to securities lending. It does not affect whether loan collateral must be treated as a fund asset for accounting purposes.7/

Jana M. Cayne

Jana M. Cayne
Senior Counsel

7/ *See* Financial Accounting Standards Board, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," Statement of Financial Accounting Standards No. 125 (June 1996); Letter from Lawrence A. Friend, Chief Accountant, SEC Division of Investment Management, to Mutual Fund Chief Financial Officers (Nov. 7, 1997).

STRADLEY RONON STEVENS & YOUNG, LLP
ATTORNEYS

2600 One Commerce Square
Philadelphia, Pennsylvania 19103-7098
(215) 564-8000
Fax: (215) 564-8120

Direct Dial: (215) 564-8115

1940 Act/Section 18

November 24, 1997

Mr. Douglas J. Scheidt
Office of Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: **Permitted Percentage under the Investment Company Act of 1940 for Securities Lending**

Dear Mr. Scheidt:

We represent The Brinson Funds ("TBF") and the Brinson Relationship Funds ("BRF"), each of which is registered as an investment company under the Investment Company Act of 1940, as amended ("1940 Act"), and each of which is a Delaware business trust issuing multiple series of shares representing multiple separate portfolios of investments. Each series of TBF and each series of BRF has the authority pursuant to its investment policies and restrictions to lend up to 33 1/3% of its total assets to qualified broker-dealers and banks. In connection with the securities lending program for TBF and BRF, we are submitting this request for an interpretive letter relating to the permitted percentage of a registered investment company's portfolio of assets which may be lent to broker-dealers or banks under

214000.3

securities lending arrangements which are operated in accordance with SEC interpretations relating to such arrangements.[1]

In State Street Bank and Trust Co., SEC No-Action letter (publicly available January 29, 1972) ("State Street"), the Staff of the Division of Investment Management ("Staff") of the Securities and Exchange Commission ("SEC") first enunciated guidelines under the 1940 Act relating to the lending of a fund's portfolio securities. Among the requirements enumerated in State Street, a fund must receive at least 100% cash collateral from the borrower for each loan. Over the years, the Staff has modified this collateral requirement so that a fund may receive in collateral, in addition to cash, securities issued or guaranteed by the U.S. government or its agencies, irrevocable stand-by letters of credit issued by a bank or any combination of the above equal to not less than 100% of the market value of the loaned securities. See, e.g., The Adams Express Co., SEC No-Action Letter (publicly available October 8, 1984); The Adams Express Co., SEC No-Action Letter (publicly available November 16, 1982); SIFE Trust Fund, SEC No-Action Letter (publicly available February 17, 1982); Lionel D. Edie Capital Fund, Inc., SEC No-Action Letter (publicly available May 15, 1975); and Salomon Bros., SEC No-Action Letter (publicly available May 4, 1975).

The Salomon letter established the percentage of a fund's portfolio which may be loaned at any time. According to that letter:

> It is [the Staff's] view that no investment company should have on loan at any given time securities representing more than one-third of its total asset value.

In Salomon, the SEC Staff likened a securities loan to a borrowing by the investment company secured by a pledge of securities, thereby drawing on the 300% asset coverage requirement contained in section 18(f) of the 1940 Act. To our knowledge, this percentage limitation has not been modified since the Salomon letter. See also, SIFE Trust Fund, supra.

---

[1] While we use the term "investment company" in this request letter, we assume that any interpretation issued as a response to this letter would apply on a series-by-series basis, as opposed to a registrant-by-registrant basis.

We believe that in applying the "one-third of total asset value" test, the collateral received in return for the securities loaned should be viewed as assets of the investment company. By way of example, in a $100 portfolio, if $50 worth of portfolio securities were loaned at any given time, and $50 in collateral were received by the investment company in connection with the loan, we believe that the investment company's total assets should be viewed as $150. We believe that the investment company's lending of $50 in portfolio securities, which represents 50% of the investment company's assets not counting the collateral, would be in compliance with the Salomon percentage limitation of one-third of total asset value of the investment company.[2]

To our knowledge, there has never been a written Staff interpretation of the phrase "one-third of total asset value" in connection with calculating the percentage limitation for securities lending purposes. Furthermore, we have been informed that very few securities lending programs that are currently in place utilize the above interpretation. Rather, in those programs, in calculating the percentage of assets which may be loaned, the collateral received in return for a loan is not counted as part of "total assets" when applying the 33 1/3% test. Therefore, we are hereby requesting that the Staff confirm the foregoing interpretation that collateral should be considered part of an investment company's "total asset value."

---

[2] TBF and BRF intend to conduct their securities lending activities in accordance with current industry practice which is to obtain 102% collateral for U.S. securities which are loaned, and 105% for foreign securities. Thus, we assume that under the above-described interpretation, whatever amount of collateral which is received in connection with a loan would be considered a fund asset. Further, provided that the amount of portfolio securities loaned did not exceed 33 1/3% of the total asset number, the lending fund would be in compliance with section 18(f).

Questions relating to this letter may be directed to me at the above number.

Very truly yours,

Bruce G. Leto / lad

Bruce G. Leto

BGL:jas

cc: Mr. E. Thomas McFarlan
Ms. Debra L. Nichols
Michael J. Jacobs, Esquire
Mr. Joseph C. Weinhoffer, Morgan Stanley Trust Company
Lisa A. Duda, Esquire