PUBLIC

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 97-141-CC
Alliance Funds
File No. 801-32361

Your letter dated March 5, 1997 requests assurance that we would not recommend enforcement action to the Commission under Section 17(d) of the Investment Company Act of 1940 (the "Act") and Rule 17d-1 thereunder if, as described in your letter, the open-end registered investment companies (the "Funds") for which Alliance Capital Management L.P. ("Alliance Capital") serves as investment adviser enter into a committed line of credit with one or more banks for which each Fund would pay a portion of the commitment fee and other expenses under the arrangement. You state that the line of credit would provide the Funds with a source of cash for temporary and emergency purposes to meet unanticipated or abnormally heavy redemption requests by shareholders of the Funds.

Facts

You state that the Funds intend to obtain the line of credit pursuant to an "umbrella" facility. There would be one loan agreement ("Agreement") to which each participating Fund would be a signatory. 1/ The Agreement would stipulate a maximum amount of aggregate borrowings and would have a term of approximately one year, during which time all banks would remain committed and no amendments could be made without mutual agreement of the banks and each Fund.

You state that each Fund in the arrangement could, at any time, borrow up to the lesser of: (i) a contractual limit, which will be stated as a percentage of its net assets, or (ii) the amount unused under the aggregate maximum amount of the facility. In either case, borrowings will be limited to no more than the amount permitted under the Act and each Fund's fundamental investment policies. When a Fund borrows under the facility, the liability for principal repayment and interest payment would be the obligation of that Fund only. Under no circumstances would any Fund be liable for the obligations of any other Fund. Borrowings under the initial Agreement would be unsecured, but collateral could be required by negotiations at a later date. 2/

1/ Certain Funds, such as money market funds, would not participate in the Agreement.

2/ If collateral is required for future borrowings, each Fund would provide collateral only in connection with its own borrowing, and would not provide collateral for borrowing by any other Fund. A Fund would provide collateral for its (continued...)

You state that the banks entering into the Agreement would be compensated with a "commitment fee," which would be fixed for the term of the Agreement and paid quarterly in arrears. The fee payment would be calculated quarterly on the unused portion of the credit line, so the amount on which the fee would be calculated would be reduced by the amount of the actual borrowings (e.g., if the entire line were being used there would be no commitment fee). You represent that the basis for apportioning the fee generally would be pro rata based on each participating Funds' average net assets. 3/ You further represent that procedures would be established, under the supervision of the Funds' boards of directors, to allocate loans on a first-come, first-served basis. If, at a particular time, the demand for loans exceeds the available supply under the Agreement, the available loans would be allocated among the Funds on a fair and equitable basis. 4/

The credit arrangement would involve a number of banks. The Funds will retain an "agent bank" to facilitate the preparation of the loan documentation and to arrange the syndication of the deal to other banks. The agent bank would be paid a fee apportioned on a pro rata basis of each participating Funds' average net assets. Moreover, additional costs, such as outside

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2/(...continued)
borrowing only if permitted under the Fund's investment policies. Telephone conversation on March 25, 1997 between Brian McCabe and Veena Jain.

3/ You state that the apportionment of the commitment fee may be adjusted to take into consideration other factors, such as the level of borrowing by each Fund. Any adjustment to the apportionment methodology will be approved by each Fund's Board of directors. Telephone conversation on March 25, 1997 between Brian McCabe and Veena Jain.

4/ You state that although the basis for allocation has not yet been determined, the most likely basis would be pro rata based on the participating Funds' average net assets and the amount requested. To establish the exact allocation, the boards of directors would consider such matters as: (i) the amount available under the Agreement; (ii) the amount requested by each Fund and the Funds in the aggregate; (iii) the availability of other sources of cash to meet each Fund's needs (such as uncommitted lines of credit, short-term, liquid investments, and cash reserves); (iv) the history of each requesting Fund's requests for loans; (v) each requested loan's expected duration; and (vi) the expected need for loans in the immediate future.

counsel fees for the Funds and banks, also would be apportioned to the participating Funds on the same pro rata basis.

Finally, the Agreement would be approved by each Fund's board of directors, including a majority of the disinterested directors, prior to any Fund entering into the Agreement and annually thereafter. Each Fund's board of directors will determine annually that the Fund's participation in the Agreement would be fair and equitable and in the Fund's best interest. The factors that each board would consider in making this determination would include: (i) the Fund's expected benefits and costs; (ii) the Fund's experience under the loan arrangement; (iii) the Fund's available sources of liquidity; and (iv) the Fund's expected continuing need for the loan arrangement.

Analysis

Section 17(d) and Rule 17d-1 prohibit an affiliated person of an investment company from participating in a joint enterprise or other joint arrangement or profit-sharing plan with such company without first obtaining an order from the Commission. The purpose of Section 17(d) and Rule 17d-1 is to protect investment companies from participating in transactions with affiliated persons on inequitable terms.

You believe that the arrangement described above does not constitute a joint or a joint and several transaction within the meaning of Section 17(d) or Rule 17d-1. In addition, you believe that the proposed arrangement will pose none of the dangers that Section 17(d) and Rule 17d-1 are designed to prevent. You assert that each Fund will participate in the arrangement on an equal basis. You represent that each Fund will share the commitment fee, agent bank fee, and other expenses under the Agreement only if its board of directors, including a majority of the disinterested directors, determines that such participation would be fair and equitable and in the best interests of the Fund. You also state that all the Funds participating in the arrangement have common and substantially similar interests. You assert that the only potential for conflict arises if the demand for borrowed funds under the line of credit exceeds the amount available under the line. You represent that, in such instance, the available loans would be apportioned among the Funds on a fair and equitable basis in accordance with procedures established by the Funds' boards of directors in advance of entering into the Agreement. 5/ You also represent that the portion of the commitment fee paid by each Fund will be so small that it will

5/ Telephone conversation on April 22, 1997 between Brian McCabe and Veena Jain.

not, as a practical matter, have any effect on the Fund's net asset value per share.

Without necessarily agreeing with your legal analysis, based on the facts and representations in your letter, we would not recommend enforcement action to the Commission pursuant to Section 17(d) or Rule 17d-1 thereunder if the Funds enter into a committed line of credit arrangement and pay the commitment and other fees as described above and in your letter. 6/ You should note that different facts or representations might require a different conclusion.

Having stated our views with respect to committed line of credit arrangements under Section 17(d) and Rule 17d-1 thereunder, we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues.

Veena K. Jain

Veena K. Jain
Staff Attorney

6/ See The T. Rowe Price Funds (pub. avail. July 31, 1995).

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1940 Act/Section 17(d) -- Rule 17d-1

ACT ICA
SECTION 17(d)
RULE
PUBLIC AVAILABILITY 4/25/97

VIA COURIER

March 5, 1997

John V. O'Hanlon, Esquire
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W., MS 7-8
Washington, D.C. 20549

Re: Committed Line of Credit

Dear Mr. O'Hanlon:

On behalf of Alliance Capital Management L.P. ("Alliance Capital"), we are writing to request assurance that the staff of the Securities and Exchange Commission ("Commission") would not recommend enforcement action under the Investment Company Act of 1940, as amended ("1940 Act"), if the open-end registered investment companies for which Alliance Capital serves as investment adviser (the "Alliance Funds") were to enter into a committed line of credit with one or more banks in order to secure a source of funds for temporary and emergency purposes to meet unanticipated or abnormally heavy redemption requests by shareholders of the Alliance Funds. Because each Alliance Fund would pay a portion of the commitment fee required under the arrangement, it is arguable that the arrangement could raise issues under Section 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Background

Historically, uncommitted lines of credit have been sufficient to meet the redemption needs of the Alliance Funds and, so far as we are aware, the industry. Uncommitted credit facilities are arrangements with banks whereby the bank has performed its credit review of a mutual fund and has agreed to entertain loan requests from the fund. The clear understanding, which is reflected in the documentation for such lines, is that the bank is under no obligation to make loans and will make them at its sole discretion. Despite the tenuous nature of such arrangements, they have served the needs of the industry to date. Their advantage is that there is no cost to the mutual fund but their disadvantage is that the bank is not under any obligation to advance funds when requested.

If all conditions remained constant, and if the history of the industry were a good predictor of the future, uncommitted credit facilities would likely be adequate to meet the emergency liquidity needs of the Alliance Funds. However, there are several important developments which make Alliance Capital believe that the Alliance Funds should have the option to seek committed lines of credit in the future.

There are relatively few banks which are active in lending to mutual funds, even with uncommitted facilities. Moreover, there is growing resistance among them to invest the effort for the formal credit review process for each individual fund (a necessary precondition to lending) without compensation. If present trends continue, uncommitted facilities will be available only from a shrinking number of banks.

Uncommitted loan facilities are generally available only from banks which have, or anticipate having, some other relationship with the mutual fund such as securities lending or custodial services. Alliance Capital believes the Alliance Funds should be in a position to secure a source of borrowing without regard to these other factors.

Banks in recent years have seen their total committed loan facilities to entities in and around the securities business (e.g., DTC and NYSE) escalate as they prepare themselves for managing cash during periods of high demand. This could increase the chance of loan requests not being funded under uncommitted facilities.

With the increased specialization and internationalization of mutual fund portfolios, the industry is appropriately giving greater attention to alternative methods for funding redemptions during periods of market volatility.

The mutual fund industry has many new funds. The ripple effect of how these funds and their shareholders handle negative market events could have significant impact on the redemption activity of the mutual fund industry at large.

The Alliance Funds disburse virtually all redemption proceeds on the day the redemption request is received and the shares are redeemed. If the portfolio manager needs to sell securities, the sale may not settle until three days after the money was disbursed.

Most mutual funds have established procedures to fund redemptions during unusual market activity. These include: holding the mailing of redemption proceeds and delaying the transmission of exchange proceeds for up to five business days; increasing reserves in anticipation of market volatility; and the establishment of uncommitted lines of credit. In light of the above listed factors, however, we believe it is appropriate to consider the establishment of committed lines of credit as a further safeguard.

Under current market conditions, Alliance Capital believes that the Alliance Funds would find it advantageous to enter into a committed line of credit so that, when the time comes, the Funds will be able to act quickly. The type of committed line of credit which Alliance Capital has discussed with various banks would have the following characteristics:

An "umbrella" facility. There would be one loan agreement ("Agreement") of which each participating Alliance Fund would be a signatory. Certain Funds, such as money market funds, would not participate, but it is currently expected that about 30 Alliance Funds, a list of which is attached hereto as Exhibit A, would initially be in the facility. Other funds advised by Alliance Capital could be added in the future.

The Agreement would stipulate a maximum amount of aggregate borrowings at one time, currently expected to be approximately $500 million.

The Agreement would have a term of approximately one year during which all banks would remain committed and no amendments could be made without mutual agreement of the banks and each Alliance Fund.

The Agreement would have normal provisions for representations and warranties, business covenants and events of default. So long as the particular Fund requesting a loan were not in default, the banks would be contractually obligated to honor all requests for loans.

Each Alliance Fund in the arrangement could, at any time, borrow up to the lesser of: (1) a contractual limit which will be stated as a percent of its net assets or (2) the amount unused under the aggregate maximum amount of the facility, in either case limited to no more than the amount permitted by the 1940 Act and each fund's fundamental investment policies.

When an Alliance Fund borrows under the facility, the liability for principal repayment and interest payment would be the obligation of that fund only. Under no circumstances would any Alliance Fund be liable for the obligations of any other Alliance Fund.

Borrowings under the initial Agreement would be unsecured (but collateral could be required by negotiations at a later date).

No bank participating in any loan arrangement would be an affiliate of Alliance Capital or any Alliance Fund.

The banks entering into the agreement would be compensated with a "commitment fee" which is a rate denominated in basis points. The rate would be fixed for the term of the

Agreement, and would be paid quarterly in arrears. The commitment fee would be calculated on the unused portion of the line, so the amount on which the fee would be calculated would be reduced by the amount of actual borrowings (e.g., if the entire line were being used there would be no commitment fee during the remaining period of the loan.)

Each Alliance Fund participating in the Agreement would pay its portion of the commitment fee. The basis for apportioning the fee would be pro rata based on the average net assets of the participating Alliance Funds.

Procedures would be established, under the supervision of the boards of directors, to allocate loans on a first come, first served basis. If at a particular time, the demand for loans exceeds the available supply under the Agreement, the available loans would be apportioned among the Alliance Funds on a fair and equitable basis. Although the basis for apportionment has not yet been determined, the most likely choice would be pro rata based on average net assets of the participating Alliance Funds and the amount requested. To determine the exact method of apportionment, the boards of directors would consider such matters as: the amount available under the Agreement; the amount requested by each Alliance Fund and by the Alliance Funds in the aggregate; the availability of other sources of monies to meet the needs of each Alliance Fund such as uncommitted lines of credit, cash reserves and other short-term, liquid investments; the history of each requesting Alliance Fund's requests for loans; the expected duration of each requested loan; and the expected need for loans in the immediate future.

As the credit arrangement would involve a number of banks, an "agent bank" would likely be retained to facilitate the preparation of the loan documentation and to arrange the syndication of the deal to other banks. That bank would be paid a fee for acting as agent. The fee would be paid when the syndication is completed or in arrears on some basis. Such fee would be apportioned among each participating Alliance Fund on a pro rata basis based on average net assets.

There would be other costs associated with the Agreement, such as outside counsel for the Alliance Funds and the banks, which would also be apportioned across the participating funds on a pro rata basis. It is the custom in the industry for counsel fees to be paid by the borrower. However, such fees are expected to be insignificant.

The Agreement would be approved by the board of directors, including a majority of the independent directors, of each participating Alliance Fund prior to any Alliance Fund entering into the Agreement and annually thereafter. No Alliance Fund would be allowed to initially participate or renew its participation in the Agreement unless the Board of such fund determines that participation would be fair and equitable and in the best interest of each participating fund. The factors the boards would consider in making this determination would include the expected benefits and costs to each fund, the experience of each fund under the loan arrangement, the availability of other sources of liquidity for each fund and the expected continuing need for the loan arrangement.

Legal Analysis and Applicable Precedent

Section 17(d) of the 1940 Act provides, in pertinent part, as follows:

> It shall be unlawful for any affiliated person of ... a registered investment company ... or any affiliated person of such person ... acting as principal to effect any transaction in which such registered company ... is a joint or a joint and several participant with such person ... or affiliated person, in contravention of such rules and regulations as the commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant ....

Rule 17d-1 under the 1940 Act provides, in relevant part, as follows:

> No affiliated person of ... any registered investment company ... and no affiliated person of such a person ... acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company ... is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval .... Rule 17d-1(a).
>
> A "joint enterprise or other joint arrangement" as used in this rule shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company ... and any affiliated person of ... such registered investment company, or any affiliated person of such a person, ... have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, ... Rule 17d-1(c).

We do not believe the arrangement described above constitutes a joint or a joint and several transaction within the meaning of Section 17(d) or Rule 17d-1. This is because the board of directors of each participating Alliance Fund, in approving participation in the Agreement for that fund, will consider only that fund's interest. In no case will a decision that a particular Alliance Fund should participate be based, to any degree, upon a determination that such participation might further the interests of other Alliance Funds.

We have found only one applicable no action letter relating to the use of a committed line of credit and payment of a commitment fee by a group of affiliated mutual funds. The no-action position taken in T. Rowe Price (pub. avail. July 31, 1995) is substantially identical to the relief requested by this letter. In the area of exemptive relief, the only relevant precedent we have found is Rule 17g-1 under the 1940 Act which provides exemptive relief for the purchase of a joint fidelity bond covering affiliated mutual funds and their affiliated investment advisers and distributors. The existence of Rule 17g-1 does not imply, however, that any sharing of a common resource or asset by affiliated mutual funds requires exemptive relief under Section 17 of the 1940 Act. The key fact distinguishing the instant arrangement and the arrangement to which Rule 17g-1 is addressed is, that under Rule 17g-1, the affiliated investment advisers and distributors of the mutual funds are permitted to be parties to the fidelity bond. Obviously, situations involving a sharing of resources by a mutual fund and its investment adviser or principal underwriter are vastly different and raise significant conflict of interest issues which are not present in the committed line of credit discussed herein.

Furthermore, there are sound policy reasons for the staff to grant the no-action relief which we request. While supplying increased liquidity to the participating Alliance Funds, the proposed arrangement will, for the reasons set forth below, pose none of the dangers that Section 17 and Rule 17d-1 are designed to prevent:

Each Alliance Fund will participate in the arrangement on an equal basis. In this regard, each Alliance Fund will have equal access to the line of credit and the costs of the arrangement, i.e., commitment fees, documentation and legal fees, will be apportioned on a pro rata basis among the participating Alliance Funds. Thus, there will be no participation by any Alliance Fund "on a basis different from or less advantageous than that of [any] other participant."

All of the Alliance Funds are on the same side of the transaction, i.e., they are all potential borrowers. Thus, their interests are common and substantially the same. The only potential for conflict is if the demand for borrowed funds under the line of credit by all of the Alliance Funds exceeds the amount available under the line. However, this situation would exist even in the absence of a committed line because any given bank or group of banks will only lend a finite amount of funds to any given mutual fund or group of funds. As described earlier, the boards of directors of the Alliance Funds will be responsible for developing criteria to determine a fair and equitable apportionment of funds available for borrowing should the funds available be less than the demand. The issue of allocating a limited resource also exists with respect to everyday purchases of securities for the Alliance Funds where there can often be cases where several funds will purchase the same security but no fund will be allotted the full amount it desires of the security.

To our knowledge, the Commission has not taken the position that the normal purchase by one or more affiliated mutual funds of the same security and the allocation among those funds of differing amounts of that security under circumstances where each fund does not receive all of the security it may have wanted raises an issue under Section 17(d).

We would also point out that the amount of the commitment fee paid by each Alliance Fund will be so small that there will not be, as a practical matter, any effect on any of the Alliance Funds' net asset value per share. In our view, each Alliance Fund's payment of its pro rata share of the commitment fee is no different from the payment of other fees by affiliated funds in a mutual fund complex. For example, many mutual fund complexes pay a management fee composed of an individual fee and a group fee determined by the ratio of the fund's daily net assets to the daily net assets of all the mutual funds in the complex. The group fee is intended to reflect the fact that affiliated mutual funds in a complex share resources such as research, trading facilities, overhead and technology. Quite obviously, this resource sharing will never be exactly equal and each fund will access and use the common resources to differing extents. Group fee arrangement have been in place for quite some time. Again, to our knowledge the Commission has never taken the position that such arrangements violate Section 17(d). The existence of these group fee arrangements and others where mutual funds pay fees on a pro-rata basis for shared resources, such as transfer agent or custodial fees, supports our view that the payment of the commitment fee by the Alliance Funds based on pro rata allocation of assets or some similar measure should not raise concerns under Section 17(d).

Conclusion

For the reasons stated above, we request that the staff of the Commission issue a letter stating that the staff will not recommend enforcement action to the Commission if the Alliance Funds enter into the committed line of credit arrangement and pay the commitment fees described above.

Should you have any questions regarding this matter, please call the undersigned at (617) 951-7801.

Sincerely yours,

Brian D. McCabe

BDM/bcw:3189246.08

cc: Jack W. Murphy, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
Edmund P. Bergan, Esq.
Andrew L. Gangolf, Esq.
J.B. Kittredge, Esq.

Exhibit A

Alliance All-Asia Investment Fund, Inc.
Alliance Balanced Shares, Inc.
Alliance Bond Fund, Inc.
Alliance Developing Markets Fund, Inc.
Alliance Global Dollar Government Fund, Inc.
Alliance Global Small Cap Fund, Inc.
Alliance Global Strategic Income Trust, Inc.
Alliance Growth and Income Fund, Inc.
Alliance Income Builder Fund, Inc.
Alliance International Fund
Alliance Mortgage Securities Income Fund, Inc.
Alliance Limited Maturity Government Fund, Inc.
Alliance Multi-Market Strategy Trust, Inc.
Alliance Municipal Income Fund, Inc.
Alliance Municipal Income Fund II
Alliance New Europe Fund, Inc.
Alliance North American Government Income Trust, Inc.
Alliance Premier Growth Fund, Inc.
Alliance Quasar Fund, Inc.
Alliance Real Estate Investment Fund, Inc.
Alliance/Regent Sector Opportunity Fund, Inc.
Alliance Short-Term Multi-Market Trust, Inc.
Alliance Technology Fund, Inc.
Alliance Utility Income Fund, Inc.
Alliance Variable Products Series Fund, Inc.
Alliance World Income Trust, Inc.
Alliance Worldwide Privatization Fund, Inc.
The Hudson River Trust
The Alliance Portfolios