

PUBLIC

JUL 29 1993

Our Ref. No. 93-408-CC
The New America High
Income Fund, Inc.
File No. 811-5399

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

By letter dated July 7, 1993, you request our assurance that we would not recommend that the Commission take any enforcement action under Section 18 of the Investment Company Act of 1940 (the "1940 Act") if the New America High Income Fund, Inc. (the "Fund") issues \$100 million of Auction Term Preferred Stock ("ATP"), \$80 million of which will be used to redeem the Fund's outstanding senior securities. The Fund will use the additional \$20 million to increase its leverage.

You represent that the Fund's capital structure currently complies with the provisions of Section 18 of the 1940 Act. The Fund currently has outstanding \$45 million aggregate principal amount of bank financing and \$35 million aggregate liquidation preference of Taxable Auction Rate Preferred Stock, which will be redeemed with the proceeds of the ATP offering. The redemption will take place contemporaneously with the ATP offering. 1/ Immediately after the Fund issues the ATP, (1) the Fund's capital structure will not comply with the asset coverage requirements of Section 18(a)(2); 2/ and (2) the Fund "will have outstanding more than one senior security which is a stock," in violation of Section 18(c). You state that following completion of the redemption, however, the Fund's capital structure will comply with all the requirements of Section 18, including the provisions regarding asset coverage and the election of directors set forth in Section 18(a)(2).

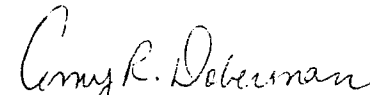
Section 18(e) generally exempts from the provisions of Section 18 senior securities issued by a closed-end fund for the purpose of redeeming any of the fund's outstanding senior securities. Section 18(e) is necessary because of the temporary noncompliance with Section 18 that could exist for the period after a fund issues senior securities for redemption purposes and before it completes the redemption. Because the Fund proposes an offering that exceeds redemptions by \$20 million, the offering does not fall squarely within the terms of Section 18(e) and therefore does not qualify in its entirety for the exemption. The Fund essentially proposes to combine an \$80 million offering under Section 18(e) with a \$20 million offering that otherwise would be permissible under Section 18 after the Fund retires its existing \$80 million in senior securities. You argue that, although the Fund's capital structure will violate Section 18 for

1/ Telephone conversation between Amy R. Doberman and Jeffrey A. Teich, dated July 28, 1993.

2/ Section 18(a)(2) requires a closed-end fund to have asset coverage of at least 200 percent following the issuance of preferred stock.

a short time prior to completion of the redemption, it would exalt form over substance to force the Fund to conduct two separate offerings, resulting in greater expense to the Fund. 3/

On the basis of the facts and representations in your letter, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission if the Fund conducts an offering for the combined purposes of retiring existing securities and increasing the amount of the Fund's outstanding senior securities. Our position is particularly based on your representations that the Fund's capital structure currently is in compliance with all the requirements of Section 18, and will so comply after the redemption is completed.


Amy R. Doberman
Senior Counsel

3/ You explain that, for example, the Fund could, in strict compliance with Section 18, refund the \$80 million of existing senior securities and immediately thereafter issue an additional \$20 million of ATP.

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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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July 7, 1993

1940 Act
Section 18(e)
Rule
Public
Availability 7/29/93

VIA FEDERAL EXPRESS

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

Re: The New America High Income Fund, Inc.

Ladies and Gentlemen:

We are counsel to The New America High Income Fund, Inc., a Maryland corporation (the "Fund"). The Fund presently has outstanding \$45 million aggregate principal amount of bank financing and \$35 million aggregate liquidation preference of Taxable Auction Rate Preferred Stock ("TARPS"). The Fund proposes to retire these securities (including all accumulated and unpaid dividends and all accrued and unpaid interest) contemporaneously with the issuance of a new Auction Term Preferred Stock ("ATP"), for an aggregate redemption price of approximately \$80 million. The Fund also proposes to issue approximately \$20 million of additional ATP as part of the refunding transaction in order to increase its leverage to the level specified by the Board of Directors. Upon completion of the proposed offering, the Fund's senior capital structure will consist of \$100 million of ATP and will be in compliance with all of the requirements of Section 18 of the Investment Company Act of 1940 (the "1940 Act").

Section 18(e)(1) of the 1940 Act provides that Section 18 shall not apply to any senior securities issued or sold by any registered closed-end fund "for the purpose of refunding through payment, purchase, redemption, retirement, or exchange, any senior security of such registered investment company" The Fund proposes to offer and sell the \$80 million of ATP pursuant to this provision to refund the \$80 million of senior securities presently outstanding. In addition, the Fund proposes to offer simultaneously the additional \$20 million of ATP otherwise permitted pursuant to Section 18(a).

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As we have discussed in our telephone conversations with and in a letter dated June 23, 1993 to John Grzeskiewicz, the Fund's review examiner, we believe that the Fund's offering of the ATP pursuant to Section 18(e)(1) and Section 18(a) of the 1940 Act will not result in a violation of Section 18 of that Act (including Sections 18(a)(2) and 18(c) thereof). We respectfully request confirmation that the Staff would not recommend action to the Commission if the Fund were to offer and sell the \$100 million of ATP in a single transaction pursuant to Section 18(e)(1) and 18(a).

Although there is very little authority interpreting Section 18(e)(1), the few references to this provision in the legislative history of the 1940 Act indicate that subsection (e) was intended to exempt from all of the other provisions of Section 18 senior securities issued by closed-end investment companies to refund other outstanding senior securities, whether or not these other securities were issued and outstanding at the time the 1940 Act was passed.^{1/} The secondary sources which we have reviewed also support this view but do not address the issue of whether there may be a simultaneous issue of an additional amount of the refunding security provided that such additional amount would be permitted under Section 18(a).^{2/}

^{1/} See S. Rep. No. 1775, 76th Cong., 3d Sess. 16 (1940) ("Except for refunding of outstanding securities and securities issued in connection with reorganizations, closed-end companies in the future may not issue more than three classes of securities . . ."); H. Rep. No. 2639, 76th Cong., 3d Sess. 18 (1940) ("Subsection (e) exempts from other provisions of [Section 18] senior securities issued by investment companies to refund senior securities and senior securities issued in connection with a reorganization . . ."); Hearings on H.R. 10065 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess. (1940) ("Refunding of existing senior securities will be permitted irrespective of above restrictions."). The one ruling which we have found which addresses Section 18(e)(1), In the Matter of Townsend Corporation of America and Townsend Management Company, 42 S.E.C. 282 (1964), involved relatively unique facts and is not relevant to the proposed offering by the Fund.

^{2/} See 3 T. Frankel, The Regulation of Money Managers 150 (1980). ("Section 18(e) exempts from all provisions of Section 18 certain issuances and sales by closed-end investment companies. The exemption is

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In the absence of authority specifically dealing with the situation presented by the Fund's ATP offering, we believe it is appropriate to apply Section 18 in a manner that achieves the policies and purposes of the 1940 Act. In this regard, it is significant that the Fund would not be offering any ATP but for the need to refund its existing senior securities. It is clear that the Fund would have the ability to increase its leverage by issuing additional TARPS and/or incurring additional debt shortly before the closing of the ATP offering in order to have \$100 million of outstanding senior securities, and thereupon "refund" the full \$100 million in a transaction subject to Section 18(e)(1). It is also clear that the Fund could refund only \$80 million of existing senior securities in a Section 18(e)(1) transaction and immediately thereafter issue an additional \$20 million of ATP. We believe that requiring the Fund to adopt either of these approaches, rather than issuing \$100 million of ATP in a single transaction, would elevate form over substance and impose additional costs on the Fund.

As noted above, the Fund's capital structure now complies with the requirements of Section 18 and will so comply upon completion of the \$100 million refunding transaction. The redemption of the existing senior securities will occur concurrently with the issuance of the new ATP, and thus the Fund should not be viewed as having both TARPS and ATP outstanding. If the Fund were not permitted to use the proceeds of the ATP offering to redeem the TARPS, the Fund would be required to redeem the TARPS before issuing the ATP. This generally would require the liquidation of portfolio securities prior to the redemption of the TARPS and the reacquisition of these and/or securities after the issuance of the ATP. This would result in significant transaction costs and could result in additional economic loss to the Fund if the prices of the relevant securities rose during the period between the redemption of the TARPS and the ATP closing.

Under these circumstances, we believe that it is appropriate to view the Fund's offering of \$100 million of new ATP as a transaction which combines an issuance permitted for the purpose of refunding its existing senior securities within the meaning of Section 18(e)(1) with an additional issuance permitted under Section 18(a). Such an interpretation, we believe, correctly focuses on the substance rather than the

(Footnote Continued)

2/ unconditional. . . . Thus, if a Company's structure was in conformity with section 18, the issuance or sale of senior securities pursuant to Section 18(e), which would render the capital structure non-conforming, is nonetheless exempt.")

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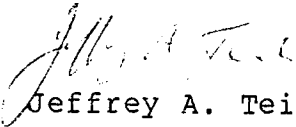
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form of the proposed offering and is consistent with the purposes and legislative history of Section 18 and the best interests of the Fund's shareholders.

Based upon the foregoing, we respectfully request confirmation that the Staff would not recommend action to the Commission if the Fund were to offer and sell the \$100 million of ATP in a single transaction pursuant to Section 18(e)(1) and 18(a).

If you have any questions regarding this request, or require any additional information in connection herewith, please call the undersigned at (617) 570-1483 or John R. LeClaire at (617) 570-1144. Pursuant to Investment Company Release No. 6330, we are transmitting one signed and two additional copies of this request.

Sincerely,


Jeffrey A. Teich

cc: Carolyn B. Lewis, Esq.
Assistant Director
David Wills, Esq.
Branch Chief
John Grzeskiewicz, Esq.
Securities and Exchange Commission
Division of Investment Management
Office of Disclosure and Review
Robert F. Birch, President
Ellen E. Terry, Vice President
The New America High Income Fund, Inc.
John R. LeClaire, Esq.
Goodwin, Procter & Hoar

YP-4176/N