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July 18, 1974

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Mr. Alan Rosenblat, Chief Counsel
Division of Investment Manager Regulation
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

10/9/74

Attention: Mr. Michael Berenson

Re: Request for Interpretative Ruling/No Action
40 Act/Sections 8, 13, 36

Gentlemen:

Our client is a registered closed-end diversified management investment company ("the Company"), registered under the Investment Company Act of 1940 ("the Act"). The Company's by-laws provide for the loaning of securities and it has been doing so for several months within the guidelines for such activities set forth and further clarified in exchanges of correspondence between members of the Staff of the Securities and Exchange Commission and State Street Bank and Trust Company (CCH par. 78,676; par. 79,056), Bernard S. Kanton (CCH par. 79,546) and Norman F. Swanton Associates (correspondence dated July 12, August 1 and August 27, 1973), copies of which are attached hereto. The Company does not receive a fee, as such, from the borrower. However, the Company does receive all dividends and interest on the loaned securities and is able to realize a significant return through short-term investment of the cash collateral posted by the borrower.

In the Kanton and Swanton correspondence, the Staff, in its response, laid down as one of its conditions to a no-action position that their "client [the intermediary] receives a written representation from each mutual fund that its directors have determined that the fee is reasonable and based solely on the services rendered." In the past, the Company's intermediaries charged the Company a fee of 1% to 1 1/4% of the value of the loaned securities for its services. However, the Company has been informed by the intermediaries that if it wished to continue participation in lending portfolio securities that it would have to pay a higher fee rate (currently

3%). It is the Company's understanding that the higher fee is charged so that the intermediary may pass some of it (presently about 2%) to the borrower. It is the Company's further understanding that the reason for this practice arises from the fact that the borrower finds it very costly to him in terms of lost interest to put up cash collateral, and that he should therefore receive a portion of the interest on his cash collateral by having a part of the fee received by the intermediary allocated to him.

The Company's directors have reviewed the proposed fee arrangement as outlined above and believe that even the fee rate of 3% to be charged by the intermediaries is reasonable in light of the current interest rates which the Company can obtain through investment of the cash collateral. The Company does recognize that a question could be raised as to whether or not the fee arrangement whereby the borrower receives part of the fee paid to the intermediary can be construed to meet the Staff's condition that the fee be "based solely on the services rendered." However, it is our opinion that the Staff requirement will be met if the directors determine that the fee paid to the intermediary is reasonable and the transaction is economically sound in light of the overall benefits to be derived by the Company, regardless of the disposition of the fee by the intermediary. Any other interpretation would appear to put investment companies at a disadvantage in the loaning portfolio securities when compared with other institutions not subject to the requirements of the Act.

Accordingly, we would appreciate your advice as to whether the Staff will take any action if the Company engages in the loaning of its portfolio securities where part of the fee paid by it to the intermediary is shared by the borrower. Officers of the Company have not agreed to the new fee arrangements pending final approval by its directors. As a result, further loans of portfolio securities have ceased with a consequent loss of income from this source for its shareholders.

We will be glad to furnish any additional information or confer with you.

Very truly yours,

Donald F. Burt

DONALD F. BURT
For the Firm

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Based upon the facts and representations above, we will not recommend that the Commission take any action against Mutual of Omaha Interest Shares, Inc. (the "Company") if the Company lends its portfolio securities pursuant to an arrangement where part of the fee paid to placing brokers is shared by the borrower. However, we cannot agree

with your opinion that a sufficiently comprehensive determination of the reasonableness of fees paid to the intermediary and to the borrower can be made if such fees are considered single in nature. Therefore, in order to maintain the fiduciary standards imposed upon investment company directors, the directors should determine that the fee paid to the placing broker is reasonable and based solely upon the services rendered and furthermore, the directors should separately consider the propriety of the fee paid to the borrower. Finally, this position is subject to the condition that such fees are not used to compensate any affiliated person or investment adviser of the Company or an affiliated person of such person or adviser.

Alan Rosenblat

Alan Rosenblat, Chief Counsel
Division of Investment Management Regulation

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