



DIVISION OF INVESTMENT MANAGEMENT

NOACT
811-4659
PEF 7-01

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ACT ICA
SECTION 15(a)(2)
RULE 14a-8(i)(2) and (i)(3)
PUBLIC AVAILABILITY 7/20/01



David F. Connor, Vice President
Delaware Investments
One Commerce Square
Philadelphia, PA 19103

April 5, 2001

RE: Lincoln National Convertible Securities Fund, Inc.
File No. 811-04659
Shareholder Proposal of Opportunity Partners, L.P.

PROCESSED

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THOMSON FINANCIAL P

Dear Mr. Connor:

In a letter dated January 7, 2001, you notified the staff of the Securities and Exchange Commission that Lincoln National Convertible Securities Fund, Inc. proposes to omit from its year 2001 proxy soliciting materials a shareholder proposal submitted by Opportunity Partners, L.P. The proposal states:

RESOLVED: The following by-law shall be adopted: "The investment advisory agreement shall be submitted to shareholders for a vote in 2002 and every year thereafter. If the shareholders do not approve continuance of the advisory contract, the board of directors may subsequently approve its continuance if not inconsistent with state or federal law. The provisions of this by-law may only be amended, added to, rescinded or repealed by the shareholders."

You request our assurance that we would not recommend enforcement action if the fund omits the proposal in reliance on Rule 14a-8(i)(2) under the Securities Exchange Act of 1934 (the "Exchange Act"), which permits a company to exclude a shareholder proposal that would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.¹

You further believe that the fund may omit the proposal in reliance on Rule 14a-8(i)(3) under the Exchange Act, which permits the exclusion of a shareholder proposal that is contrary to any of the Commission's proxy rules.

¹ In connection with this request, we also received and considered a January 16, 2001, letter submitted to the staff by Opportunity Partners, L.P.

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Rule 14a-8(i)(2)

You state that the proposal may be excluded under Rule 14a-8(i)(2) because it would cause the fund to adopt a by-law that conflicts with Section 15 of the Investment Company Act of 1940 (the "1940 Act"). Section 15(a)(2) of the 1940 Act permits the approval of the continuance of an advisory agreement by either a fund's board of directors or its shareholders independently and without the other's consent or participation.

You state that the proposal would require the fund to submit the investment advisory agreement to a shareholder vote even if the board of directors has already approved its continuance. You argue that the result would improperly divest the board of its ability to approve continuance of the fund's advisory agreement, citing as precedent the staff's position in Ellsworth Convertible Growth and Income Fund, Inc. (Sept. 21, 2000).

Ellsworth involved a shareholder proposal to amend a fund's by-laws to require submission of the advisory agreement to a vote of shareholders every other year. The intent of the shareholder proposal in Ellsworth was to preclude the fund's board of directors from voting on the advisory agreement.² The staff took the position that the proposal would violate federal law because it would divest the board of its independent right to vote on continuance of the advisory agreement.

Unlike Ellsworth, the shareholder proposal here does not deprive the board of its independent right under Section 15(a)(2) to approve continuance of the fund's advisory agreement; in fact, the proposal specifically provides that the board may approve continuance of the agreement after a shareholder vote against continuance of the agreement.³ Further, we see no reason why the proposal would preclude the fund's board from voting on continuance of the agreement at any time it so desired. Therefore, we cannot agree with your view that the shareholder proposal would violate Section 15 of the 1940 Act and that it may be excluded under Rule 14a-8(i)(2) of the Exchange Act.

Rule 14a-8(i)(3)

You state that the proposal would permit Opportunity Partners, L.P. to circumvent the limitations on resubmissions of proposals set forth in Rule 14a-8(i)(12) under the Exchange Act and can be excluded under Rule 14a-8(i)(3), which permits the exclusion of proposals contrary to the Commission's proxy rules.

You argue that the annual submission of the advisory agreement to shareholders contemplated by the proposal would effectively require the fund to include in its proxy statement each year a proposal to terminate the fund's advisory agreement, irrespective of past submissions or the vote previously received with respect to such proposals.

We disagree with your view that the shareholder proposal is substantially similar to past shareholder proposals to terminate the fund's advisory agreement. One obvious difference in the operation of Sections 15(a)(2) and 15(a)(3) of the 1940 Act is that a shareholder vote to terminate the advisory agreement under Section 15(a)(3) cannot be overruled by the fund's board of directors. However, whether shareholders vote to approve continuance of the advisory agreement or not, Section 15(a)(2) permits the board of directors to vote to continue the agreement. Therefore, we cannot agree with your view that the

² See the letters dated July 28, 2000 and August 16, 2000, submitted to the staff by Opportunity Partners, L.P. in support of its proposal in Ellsworth.

³ Section 15(c) of the 1940 Act, in any event, requires that any renewal of an advisory agreement be approved by a vote of a majority of a fund's non-interested directors.

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shareholder proposal would violate the Commission's proxy rules and that it may be excluded under Rule 14a-8(i)(3).

Attached is a description of the informal procedures the Division follows in responding to shareholder proposals. If you have any questions or comments concerning this matter, please call me at (202 942-0516).

Sincerely,



Mary A. Gole
Senior Counsel

ATTACHMENT

Cc: Opportunity Partners, L.P.
C/o Mr. Phillip Goldstein
60 Heritage Drive
Pleasantville, NY 10570