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May 9, 1983

Act	I.C.A. - 40
Section	18(f)
Rule	Sections 17(f) and 18(f) of the Investment Company Act of 1940
Public Availability	1/20/84

By Hand

Stanley B. Judd, Esq.  
Deputy Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: Pension Hedge Fund Inc.

Dear Mr. Judd:

At the request of our client, Pension Hedge Fund Inc., a Maryland corporation (the "Fund"), we respectfully request that the Staff of the Securities and Exchange Commission (the "Commission") advise us that it will not recommend enforcement action to the Commission if the Fund trades in securities index futures contracts and related options, as described herein and in the Fund's Preliminary Prospectus dated May 9, 1983 (the "Preliminary Prospectus") which forms a part of the Registration Statement on Form N-1 filed today with the Commission, a copy of which is enclosed for your information.

Background

As described in the Preliminary Prospectus, the Fund is a newly organized Maryland corporation which will operate as a non-diversified, open-end, management investment company with an investment goal of capital appreciation. The Fund is intended to attract large tax-exempt investors, such as employee benefit funds, and the initial public offering price will be \$1,000,000 per share, with a minimum initial investment of one full share.

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As one of its investment policies, the Fund intends to use securities index futures contracts as a hedge against changes in market conditions. Such futures contracts will not be used for speculation but solely as a hedge. Only a small percentage of the Fund's total assets will be permitted to be used for securities index futures contracts, as discussed below. See "Discussion - Section 18-f" below. In addition, the Fund may use options on securities index futures as part of its hedging techniques. Such options would be included under the overall limitations on the use of options by the Fund, as discussed below. See "Discussion - Section 18-f" below.

By letter of this date, we are also requesting an interpretation from the Staff of the Commodity Futures Trading Commission (the "CFTC") to the effect that (i) the Fund will not be considered a "pool" for purposes of Section 4.10(d) of the CFTC's Regulations and (ii) the Fund's investment adviser will not be considered a "commodity trading adviser" or its organizers "commodity pool operators" for purposes of Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA").

#### Discussion

Section 18(f). Section 18(f) of the Investment Company Act of 1940 (the "'40 Act") provides that it shall be unlawful for any registered open-end company to issue any class of senior security or sell any senior security of which it is the issuer, except for certain permitted bank indebtedness.

In '40 Act Release No. 7221 ("Release 7221"), the Commission took the position that the purchase of commodities futures contracts may involve the creation of senior securities. The Commission determined to permit investment companies to trade commodities futures contracts provided certain conditions were met:

(i) maintenance of asset coverage equal to at least 300% of the value of the futures contracts;

(ii) collateralization by means of a segregated account containing an amount of cash or cash equivalents equal to the amount of initial margin;

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(iii) investment of not more than twice the initial margin in any futures contract, and

(iv) investment of not more than 10% of the company's total assets in futures contracts.

The Fund believes that it has adopted a series of limitations on its use of securities index futures which provide equivalent, if not greater, protection to investors. These limitations are as follows:

(i) the Fund will trade only in securities index futures and not other types of commodities futures;

(ii) the Fund will only use securities index futures as a hedge against changes in market conditions and not for speculation -- thereby seeking to reduce risk not create it;

(iii) the amount of margin deposits on such futures positions will not exceed 5% of the Fund's total assets;

(iv) the aggregate market value of securities index futures contracts held by the Fund will at no time exceed 10% of the Fund's total assets; and

(v) an amount of cash or cash equivalents equal to the market value of all securities index futures contracts purchased by the Fund will be deposited in a segregated account with the Fund's custodian, thereby insuring that the use of such futures contracts is unleveraged.

In addition, options on securities index futures will be considered part of the Fund's option portfolio and will therefore be included in the limitations thereon:

(i) the market value of securities represented by uncovered calls,\* the exercise price of puts sold, plus the amount maintained in deposits against short sales

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\* The Fund does not intend to write uncovered calls on securities index futures.

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will at no time exceed 25% of the value of the Fund's total assets; and

(ii) the Fund may not invest more than 5% of its total assets at any one time in premiums paid for call options and put options.

In view of the limitations on the amount of the Fund's total assets which may be committed to securities index futures, we do not believe that the 300% assets coverage test cited in Release 7221 is a relevant consideration here. In addition, the limitations on committable funds, coupled with the limited use to be made of such futures (i.e. only for hedging), would appear to make the condition stated in Release 7221 relating to investment of no more than twice the initial margin in any particular futures contract an unnecessary restriction.

Therefore, we believe that the use of securities index futures by the Fund as outlined above will accord with Section 18(f) of the '40 Act and will not result in excessive borrowing or the issuance of excessive amounts of senior securities and will not increase unduly the speculative character of the Fund's common stock. See IDS Bond Fund, Inc. (available April 10, 1983).

Section 17(f). Section 17(f) of the '40 Act provides that every registered management company shall place and maintain its securities and similar investments in the custody of a bank, a member of a national securities exchange or the investment company itself, subject to such rules and regulations as the Commission may prescribe.

The Fund will seek to enter into an arrangement with any futures commission merchant ("FMC") with whom it deals which will satisfy the requirements of both Section 17(f) of the '40 Act and Section 4(d) of the CEA, which requires segregation of customer funds by the FMC. Such an arrangement will provide that the Fund's initial margin payments will be paid into an account in the FMC's name with the Fund's custodian. Such amounts would be paid to the FMC only if the Fund failed to perform its

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agreement with the FMC. Payments of variation margin to or from the FMC will be made on a daily basis in accordance with industry practice. If the Fund has an unrealized net gain above the amount of any net variation margin it has already received, the FMC, as of the close of that trading day, will receive a variation margin payment from the Fund in the amount of such gain. By 10:30 A.M. on the next trading day, the FMC must notify the Fund of its entitlement to receive a variation margin payment and the Fund will promptly demand payment of that amount. Although the FMC may hold excess margin overnight, the Staff has taken the position that this is incidental to the transaction and not of sufficient duration to trigger the requirements of Section 17(f). See IDS Bond Fund, Inc. (available April 10, 1983) and Montgomery Street Income Securities, Inc. (available April 10, 1983). Any variation margin received by the Fund would be deposited with its custodian.

We believe this arrangement to be in accord with the provisions of Section 17(f) as interpreted by the Staff of the Commission. See Claremont Capital Corp. (available September 16, 1979); IDS Bond Fund, Inc. (available April 10, 1983) and Montgomery Street Income Securities, Inc. (available April 10, 1983).

#### Conclusion

Based on the foregoing, we respectfully request that the Staff advise us that it will not recommend enforcement action to the Commission if the Fund uses securities index futures contracts and options thereon as described herein and in the Preliminary Prospectus. We would greatly appreciate your response prior to the effective date of the Registration Statement.

If you require any further information with respect to this request, please contact the undersigned at (212) 371-6000.

In accordance with Securities Act Release No. 33-6269, seven copies of this request are enclosed herewith. Please acknowledge receipt of this request on the additional copy enclosed herewith and return it to our messenger.

Very truly yours,

  
John P. Lowe, Jr.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.  
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December 9, 1983

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By Hand

Stanley B. Judd, Esq.  
Deputy Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: Pension Hedge Fund Inc.

Dear Mr. Judd:

You have requested that we supplement our letter to you of May 9, 1983, in which we requested, on behalf of our client, the Pension Hedge Fund Inc. (the "Fund"), that the Staff of the Securities and Exchange Commission (the "Commission") not recommend enforcement action should the Fund use securities index futures contracts as a hedge against changes in market conditions as more fully described in the Fund's prospectus.

First, we confirm, as stated on page nine of the Fund's prospectus, that the Fund will not write options on securities index futures. Rather, the Fund desires to purchase and sell securities index futures contracts or related options, as described in the Fund's prospectus at page nine, as a hedge against changes, resulting from market conditions, in the values of securities held in the Fund's portfolio, or which it intends to purchase, and to do so only when the transactions are economically appropriate to the reduction of risks inherent in the ongoing management of the Fund.

Second, at several places in its prospectus the Fund has stated that it will deposit various amounts of

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cash, cash equivalents or securities with the Fund's custodian, or other party, in order, in effect, to collateralize various positions which the Fund takes. For example, at page seven of its prospectus, the Fund states that it will not write puts unless it has a sufficient reserve of cash, securities of the United States Government or high grade debt securities held by the Custodian or on deposit with the broker to cover fully the purchase requirement arising from the put, unless an offsetting put option is purchased. Similarly, for example, on page nine of its prospectus, the Fund states that it will deposit into a segregated account with its custodian an amount of cash and cash equivalents equal to the market value of stock index futures contracts which it owns at any given time. The Fund has stated in its prospectus that it will, in effect, collateralize other positions which it may take.

The Fund wishes to emphasize to the Staff of the Commission that the Fund will maintain collateral sufficient so that at all times all of the positions which it has undertaken to collateralize will, in the aggregate, in fact be collateralized as described.

Third, we would like to clarify to the Staff of the Commission the language on pages four and five of our letter to you of May 9 concerning payments of initial and variation margin to or by futures commission merchants ("FCM"). The Fund intends to pay its initial margin amount into an account in the FCM's name with the Fund's custodian, which amount, however, would actually be available to the FCM only in the event that the Fund fails to perform its contract with the FCM. Adjustments in margin are made daily in the futures industry to account for changes in the value of the underlying contractual commitment. In case the Fund has an unrealized net gain on an underlying contract on a particular day, which gain is above and beyond any net unrealized gains for which it has already received net variation margin payments, it will be entitled to receive a variation margin payment from the FCM. In keeping with industry practice, the FCM will notify the Fund by 10:30 A.M. on the next trading day of the Fund's right to receive the variation margin payment and the Fund intends to demand payment thereof promptly. Similarly, if the Fund has an unreal-

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ized net loss on a particular day, the FCM will require the Fund to make a variation margin payment to the FCM in order to cover the paper loss.

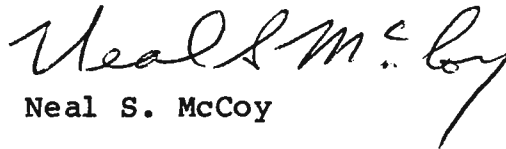
We are hopeful that the foregoing supplementary information will enable the Staff of the Commission to advise us that it will not recommend that the Commission take enforcement action against the Fund should the Fund trade in securities index futures contracts and related options as described in our letter to you dated May 9, 1983, as supplemented by the information supplied hereby, and appearing in the Fund's prospectus.

We would very much appreciate receiving your response to our letter to you of May 9, 1983, as supplemented with the information supplied hereby, at your earliest convenience.

Please do not hesitate to contact the undersigned at (202) 463-8700, or Nicholas J. Serwer at (212) 371-6000, if you require further information with respect to our requests.

In accordance with Securities Act Release No. 33-6269, seven copies of this request are enclosed herewith. Please acknowledge receipt of this request on the additional copy enclosed herewith and return it to our messenger.

Very truly yours,

  
Neal S. McCoy



**PUBLIC**

~~MAY~~ 20 1984

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 83-418-CC  
Pension Hedge Fund Inc.  
File No. 811-3727

Pension Hedge Fund Inc. ("Fund") is a registered open-end management company. It intends to sell and purchase stock index futures contracts and to purchase options on stock index futures contracts as a hedge against the effects of changing market conditions on the value of the Fund's portfolio. The Fund will hedge by selling stock index futures contracts when an anticipated market decline might adversely effect the value of the Fund's portfolio ("short hedge"). We understand that the Fund will also hedge by purchasing stock index futures contracts when it wishes to acquire individual stocks in an orderly fashion so as not to effect materially the market price of those stocks ("long hedge"). In such circumstances, the purpose of the long hedge would be to offset increases in market prices occurring during the period of the Fund's acquisition program. When the Fund purchases stock index futures contracts it will deposit in a segregated account with its custodian an amount of cash and cash equivalents equal to the market value of such contracts. These assets will collateralize no other transaction.

In its prospectus dated September 8, 1983, the Fund represents, that it may buy or sell securities index futures contracts in a greater dollar amount than the dollar amount of securities being hedged if the historical volatility of the prices of such securities has been greater than the historical volatility of the index. The Fund also represents, among other things, the following: that the Fund's total assets, less liabilities (other than those described in this sentence) must be at least 300% of the sum of (i) all currently outstanding borrowings, (ii) the amounts maintained in deposits against short sales (not including the proceeds from the short sales), (iii) the market value of securities index futures, and (iv) the exercise price of puts sold. These limitations are in addition to other limitations expressed in your letters which are not repeated here.

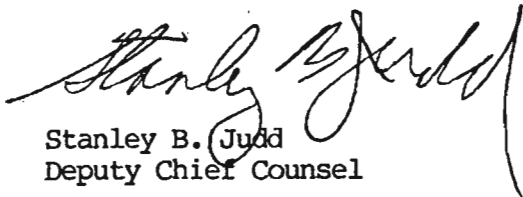
The Division of Investment Management ("division") has indicated that it would not recommend action to the Commission under section 18(f) of the Investment Company Act of 1940 ("Act") with respect to a fund's use of futures as a hedge where (1) long hedges are collateralized with cash or cash equivalents equal to the market value of the futures contract purchased and (2) the hedging transactions are within limits which are consistent with the purpose of hedging, i.e., reducing risk. SteinRoe Bond Fund, Inc. (pub. avail. January 16, 1984) regarding the use of interest rate futures contracts as a hedge.

Accordingly, based on the representations set forth above as contained in the Fund's prospectus, and on the facts and representations contained in your May 9, 1983 letter, as supplemented by your December 9, 1983 letter, we would not recommend action to the Commission under section 18(f) of the Act if the Fund uses stock index futures contracts as a hedge and in accordance with the limits and conditions represented.

The division has also indicated that it would not recommend action to the Commission under section 17(f) of the Act where (1) in connection with its futures transactions, a fund establishes and maintains a "margin" account with its bank custodian to be held in the name of the Futures Commission Merchant ("FCM"), (2) amounts deposited in the account that are in excess of required margin are withdrawn by the fund, and (3) the FCM can gain access to the assets held in the account only if the FCM states that all conditions precedent to his right to direct disposition under the agreement between the FCM and the fund have been satisfied. In addition, with respect to daily gains and losses resulting from changes in the value of the futures positions that are debited and credited to the custodial account ("variation margin"), the division has stated that it would not recommend action under section 17(f) of the Act if gains due to the fund at the close of the clearing corporation's trading day are paid to the fund by the FCM the next business day. SteinRoe Bond Fund, Inc. (pub. avail. January 16, 1984) regarding margin account requirements.

Accordingly, based on your representations, we would not recommend action to the Commission under section 17(f) of the Act if the Fund establishes and maintains its margin account as described, provided the Fund withdraws from its custodial margin account amounts in excess of the required margin.

This response, as a result of your consent, will be made public upon issuance.



Stanley B. Judd  
Deputy Chief Counsel