

Funds, Inc. Investment Advisory Company

Apr 21, 1972

FUNDS, INC.

TOTAL NUMBER OF LETTERS: 2

SEC-REPLY-1:

**Mr. Robert L. Stillwell
Baker & Botts
One Shell Plaza
Houston, Texas 77002**

Dear Mr. Stillwell:

This is in response to your letter of February 20, 1972 written on behalf of Funds, Inc. ("Funds") and its wholly owned subsidiary Funds, Inc. Investment Advisory Company ("Investment Advisory"), a registered investment adviser under the Investment Advisors Act of 1940 ('Act'). In your letter of January 19, 1972 you had stated that it was your assumption that an assignment would be involved in such transaction, and you asked whether Investment Advisory's proposed method for obtaining the consent of its clients to the assignment would be proper. In light of our February 1, 1972, response to your letter of January 19, 1972, you ask whether the spin off of Funds' shares by its parent, Lincoln consolidated, Inc. ("Lincoln") would, in fact, constitute an assignment of the investment advisory contracts of Investment Advisory under the provisions of Section 2(a)(1), 2(a)(12) and 205(2) of the Act.

As I understand the facts as now presented, the shares of Funds, a wholly owned subsidiary of Lincoln, would be distributed by Lincoln to its shareholders in proportion to their current shareholdings. As expressed in your letter of January 19, 1972, this spin off of Funds' shares would be effected as a part of a reorganization to be affected between Lincoln and Illinois Central Industries, Inc. As such, the shares of Funds would be owned by the same persons who now indirectly own them through their share ownership of Lincoln. Investment advisory would still be wholly owned by Funds, and the personnel of both funds and Investment Advisory would remain substantially the same, particularly with respect to the research and analyst staffs.

On the basis of your representations, this Division will raise no question under Sections 202(a)(1), 202(a)(12) of the Act if the shares of Funds are distributed by Lincoln to its shareholders without obtaining the consent of each of the investment advisory clients of Investment Advisory to the resulting indirect assignment of their investment advisory contracts.

You understand, of course, that this is a staff position, and the fact that we have indicated that we will not raise any objection or recommend any enforcement action on the basis of the particular facts in this case, should not be understood or construed to be an interpretation that such proposed activity would be in accord with applicable statutory or regulatory provisions.

Sincerely,

Albert D. Sturtevant
Assistant Chief Counsel

**INQUIRY-1:
BAKER & BOTTS**

**One Shell Plaza
Houston, Texas 77002
G-14, 456Q
Funds Inc. Investment
Advisory Company**

February 28, 1972

**Securities and Exchange Commission
500 North Capitol, North West
Washington, D. C. 20549**

**Attention: Mr. Albert D. Sturtevant,
Assistant Chief Counsel
Division of Trading and Markets**

Re: Sections 2(a)(1), 2(a)(12) and 205(2)/Investment Advisers Act

Gentlemen:

By letter dated January 19, 1972, we asked for a no action position relating to a possible "assignment" of investment advisory contracts under Sections 2(a)(1), 2(a)(12) and 205(2) of the Investment Adviser's Act. We have received your reply by letter dated February 1, 1972. Copies of both such letters are enclosed for your reference. Our request and your reply were based on the assumption that the transactions described in our letter constituted an "assignment" within such provisions and, therefore, required some form of consent from the advisory clients of Funds, Inc. Investment Advisory Company ("Investment Advisory"). We wish to reconsider the matter in light of the proposition that the transactions described in our prior letter will not result in an "assignment" of the advisory contracts. In this regard, it is our conclusion that the distribution of the stock of Funds, Inc. to the shareholders of Lincoln Consolidated, Inc. ("Lincoln") will not result in a change in the beneficial ownership or control of Investment Advisory and, therefore, will not constitute an "assignment" of such contracts. The only change resulting from the distribution is that Funds, Inc., the parent Company of Investment Advisory, will be publicly-owned by the same persons (and in the same proportions at the time of the distribution) who now own Lincoln. Lloyd M. Bentsen, Sr. and Elmer C. Bentsen, together with certain relatives and affiliated companies, own beneficially approximately 35 percent of the outstanding Lincoln shares and will receive the same percentage of Funds, Inc. shares distributed.

There are no substantial changes anticipated in the management or principal operating personnel of Funds, Inc. or Investment Advisory. W. L. Doherty, formerly Chairman of the Board, President and chief executive officer of Funds, Inc., has resigned from such positions effective February 29, 1972. He has been replaced as President and chief executive officer by R. Edgar Luman, formerly a Vice President and Director of Funds, Inc. and of Investment Advisory. Charles Miller, the President and a Director of Investment Advisory, will replace Mr. Doherty on the Funds, Inc. Board of Directors. Other changes may take place on the Funds, Inc. and Investment Advisory Boards of Directors, but no such changes are known at this time. The Funds, Inc. and Investment Advisory research and analyst staffs are not expected to change. In our judgement, there will be no change of "control" of Investment Advisory by virtue of or in connection with the distribution of Funds, Inc. shares.

There appears to be adequate precedent for a no-action position where a stock transfer does not result in a change of ultimate beneficial ownership. A recent example involved Securities Management and Research, Inc. under the Investment Company Act.

Please advise the undersigned as to whether or not the Division of Trading and Markets concurs in the conclusion set forth herein to the effect that the described transactions will not result in an

"assignment" of contracts between Investment Advisory and its advisory clients.

Very truly yours,
BAKER & BOTTS

Robert L. Stillwell

RLS/99
Enclosures

cc: Charles Miller President
Funds inc. Investment Advisory Company
R. Edgar Luman, President
Funds, Inc.