OMNI MANAGEMENT CORPORATION

Publicly Available December 13, 1975

SEC LETTER

Advisers Act Sec. 206

November 13, 1974

Notwithstanding the reference to ‘violation of applicable law’ and the proviso at the end of the new provision you propose, we believe that the use of the adjective ‘gross' to qualify ‘negligence or malfeasance’ may lead clients without expertise in the law to believe that ordinary negligence or malfeasance would not be sufficient to give rise to a right of action against Omni Management Corporation. Accordingly, we suggest that ‘gross' be deleted or, alternatively, that no reference be made to negligence or malfeasance. We also believe that the concluding proviso should mention state law as well as the federal law.

Please inform me how you plan to proceed.

Alan Rosenblat
Chief Counsel
Division of Investment Management Regulation
by: Seymour Spolter
Special Counsel

INCOMING LETTER

July 15, 1974

Mr. Alan Rosenblat, Chief Counsel
Division of Investment Management Regulation
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 10549

Re: Omni Management Corporation

Dear Mr. Rosenblat:

This office is counsel for the above referenced corporation which is registered as an investment adviser under the Investment Adviser's Act of 1940.

As a result of a recent inspection of our client's registration by Mr. Richard C. Andersen, Mr. Edward Harmelin, attorney in the Branch of Enforcement of the Securities and Exchange Commission's Chicago office, requested that our client delete from its investment contracts the provision included therein as follows:

> . . . ‘Omni shall not be liable for errors of judgment or other errors in connection with opinions or information furnished by it to Client pursuant to this agreedebt, since it is understood that Omni is acting in an advisory capacity only.’

Mr. Harmelin brought to our client's attention the letter of interpretation issued by the Division of Investment Management Regulation on January 5, 1974, in response to an inquiry by Auchinclauss & Lawrence, Inc., and stated that the Commission would have no objection to our client's use of a so-called ‘hedge clause’ in the form of the clause quoted in the letter of interpretation to Auchinclauss &

Lawrence, Inc. We would suggest that the following language incorporates the concepts reflected in the provision set forth in the Auchinclauss & Lawrence, Inc. letter, in a format more compatible with the form of contract utilized by our client:

> 'It is understood that Omni is acting in an advisory capacity only, and accordingly it is agreed that Omni shall not be liable for errors of judgment or other errors not involving gross negligence or malfeasance or violation of applicable law, in connection with opinions or information furnished by it to Client pursuant to this agreement; provided, however, that nothing herein shall constitute a waiver or limitation of any rights which Client may have under any federal securities laws.'

This letter should not, of course, be construed as an acknowledgement that the language presently included in our client's contracts is in any way improper. However, if the foregoing proposed language is acceptable to the Commission's staff, I will propose to our client that the revision be made in all agreements entered into with new clients.

Very truly yours,

Robert L. Brooks