PUBLIC

4 MAY 1994

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-256-CC
Century Shares Trust
File No. 811-19

Your letter of May 3, 1994 requests assurances that we would not recommend enforcement action to the Commission pursuant to Rule 17d-1 under the Investment Company Act of 1940 (the "Investment Company Act") if, as described in your letter, Century Shares Trust, a registered investment company (the "Trust"), externalizes its management and investment advisory services in reliance on the exception for investment advisory contracts contained in Rule 17d-1(c).

You state that the Trust currently is internally managed under the direction of five trustees. The day-to-day decisions concerning operations and changes in the Trust's portfolio are made by two of the trustees, Mr. Allen W. Fulkerson, the Chairman, President, and Managing Trustee, and Mr. William W. Dyer, Jr., Vice President. The remaining three trustees are not interested persons of the Trust within the meaning of Section 2(a)(19) of the Investment Company Act.

You state that, following the proposed externalization, Boston Insurance Investors, Inc., which will change its name to Century Capital Management, Inc., will serve as the Trust's investment adviser (the "Adviser").1/ Under the proposed advisory agreement (the "Agreement"), the Adviser will receive a fee, payable monthly, equal to 1/12 of the sum of 0.7% of the first $250 million, and 0.6% of amounts exceeding $250 million, of the net asset value of the Trust at the end of that month.

You represent that the Adviser will not propose any change in the method of computing the advisory fee during the first three years after the effective date of the Agreement. In addition, you represent that the Adviser's initial stockholders have no present intention of selling any of their stock in the Adviser. Moreover, you represent that the Adviser will be obligated for a period of five years from the effective date of the Agreement to repurchase for book value (which would exclude any value attributable to the Agreement) all of the stock of any stockholder that is employed by the Adviser upon the voluntary termination of that stockholder's employment.

You also represent that, if any stockholder of the Adviser sells any stock of the Adviser within three years from the effective date of the Agreement, otherwise than as a result of

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1/ The Adviser is presently the investment adviser to a limited partnership. Mr. Fulkerson and Mr. Dyer will together own 90% of the capital stock and all of the voting stock of the Adviser. Mr. Richard F. Cook, Jr., who is the Secretary of the Trust, will own the remaining 10% of the non-voting, capital stock.

the death or disability of Mr. Fulkerson or Mr. Dyer, the selling stockholder will pay to the Trust a percentage of his "sale profit" in accordance with the following formula (the "Recapture Formula"): (a) 100% of any sale profit if the sale occurs during the first year of the Agreement; (b) 66 2/3% of any sale profit if the sale occurs in the second year; and (c) 25% of any sale profit if the sale occurs in the third year.2/ You state that the Recapture Formula would not apply to any merger, acquisition, affiliation, or other restructuring designed to expand or strengthen the Adviser's activities (collectively, a "Restructuring"), in which the Adviser's stockholders dispose of any of their shares of the Adviser, as long as the Adviser's stockholders do not receive cash or other readily marketable consideration. The Recapture Formula would apply, however, if, within three years of the effective date of the Agreement, the Adviser's stockholders receive cash or other readily marketable consideration in connection with a Restructuring, or if they receive non-cash or non-marketable consideration but subsequently exchange that consideration for cash or marketable consideration.

You state that, after the proposed externalization, the Trust's trustees will retain control of the Trust's operations. The Trust will establish an audit committee and trustees' nominating committee, both to be composed exclusively of disinterested trustees. The trustees will continue to hold quarterly meetings to review the Trust's affairs, including the Adviser's monthly statements detailing transactions in shares of the Trust and changes in the Trust's portfolio. The proxy material of the Trust will be prepared under the supervision of the disinterested trustees. The disinterested trustees will also review from time to time the policies and practices of the Adviser with respect to brokerage allocation.

You state that the Adviser will not undertake any other conflicting duties of loyalty that would affect its prior fiduciary duty to the Trust. For a period of five years from the effective date of the Agreement, the Adviser will give the Trust advance notice in writing of any proposed undertaking by it of

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2/ You state that "sale profit" is defined as an allocated portion of the excess of (A) the net proceeds derived from the sale, over (B) the book value of the Adviser attributable to the shares sold, less any cumulative operating loss incurred by the Adviser after the effective date of the Agreement. The "allocated portion" of the result obtained by applying the above formula would be that portion of the excess value that is fairly attributable to the Agreement with the Trust, as distinct from being attributable to income from other activities of the Adviser. The allocation would be proposed initially by the Adviser and approved by the disinterested trustees of the Trust.

material significance (including obtaining any new clients) and will provide to the Trust all information relevant to a determination of the effect of this undertaking on the Adviser's ability to carry out its obligations to the Trust under the Agreement. You also represent that the proposed externalization will not result in a material increase in the Trust's total operating expenses.

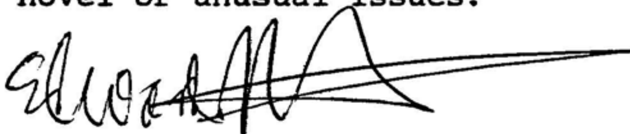
You state that the externalization proposal and Agreement have been evaluated and recommended as being fair and reasonable and in the best interests of the Trust and its stockholders by two of the independent trustees, who were advised by independent legal counsel. On the basis of their recommendation, the trustees have unanimously voted to authorize the Agreement and to submit it to the Trust's stockholders for approval.

You state that the principal reason for the proposed transaction is the trustees' belief that an external adviser will have greater success than the Trust in attracting and retaining talented personnel through the Adviser's ability to offer compensation incentives, including equity participation, in an independent entity. You also state that the trustees have been influenced by their belief that compliance by the Trust with Federal and state securities laws will involve less interpretive review and be less costly if the Trust is externally managed, because the regulatory framework governing investment companies has largely evolved in relation to externally managed funds.

Rule 17d-1(a) generally prohibits an affiliated person of a registered investment company from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement in which the registered investment company is a participant, without the prior approval of the Commission. Rule 17d-1(c), however, excepts from the definition of "joint enterprise or other joint arrangement" an "investment advisory contract subject to Section 15 of the Act." The staff previously has taken the position that the externalization of the advisory and management functions of an internally managed investment company will qualify for the exception in Rule 17d-1(c) provided that there is no: (1) shift in control of the day-to-day management of investment company affairs from its board of directors to an external advisory entity; (2) transfer of value from the investment company to the new advisory entity; or (3) acquisition by an affiliate of the investment company of an ownership interest in, or an employment interest involving material compensation with, the new investment adviser that places upon the affiliate new fiduciary duties that may conflict

with existing fiduciary duties of loyalty to the investment company.3/

We would not recommend enforcement action to the Commission if the Trust, in reliance on Rule 17d-1(c), externalizes its investment advisory and management services, as described in your letter. Because our position is based on the facts and representations in your letter, you should note that any different facts or representations might require a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not express any legal conclusions on the questions presented. Finally, having stated the requirements for an internally managed investment company to externalize its investment advisory and management services in reliance on Rule 17d-1(c), we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues.



Edward J. Rubenstein
Attorney

3/ See National Aviation & Technology Corporation (pub. avail. Feb. 16, 1979). See also The California Muni Fund and the New York Muni Fund (pub. avail. Nov. 28, 1986); Equity Strategies Fund, Inc. (pub. avail. Jun. 3, 1986).

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May 3, 1994

Act ICA of 1940
Section
Rule 17d-1(c)
Public Availability 5/4/94

Division of Investment Management
Securities and Exchange Commission
450 Fifth Street
Washington, D.C. 20549

Dear Sirs: (Century Shares Trust - File No. 811-19)

We are acting as counsel for Century Shares Trust (the "Trust"), a business trust organized under the laws of Massachusetts pursuant to a Declaration of Trust dated March 1, 1928, as amended, which operates as a diversified open-end management investment company under the Investment Company Act of 1940 (the "Act"). In that capacity, we respectfully request your confirmation that you will not recommend action to the Securities and Exchange Commission if the Trust externalizes its management by entering into an Investment Advisory and Management Services Agreement (the "Agreement") with a Massachusetts corporation presently named Boston Insurance Investors, Inc., whose name will be changed to Century Capital Management, Inc. (the "Adviser"), without the filing of an application for an order pursuant to Rule 17d-1 under the Act.

In our opinion, based on the facts stated below, implementation of the Trust's plan of externalization does not require an application and order under Rule 17d-1 because the proposed Agreement is an "investment advisory contract" within the meaning of subsection (c) of the Rule and thus exempt from the definition of "joint enterprise" contained in that subsection.

I. Facts

The Trust

The Trust has operated continuously since 1928 as a diversified open-end management company with the investment objective of achieving long-term growth of principal and income through investment in a diversified portfolio of common stocks, or securities convertible into common stocks, of insurance companies and banks. As of April 29, 1994, the Trust had approximately 16,100 stockholders of record and net assets of approximately $215 million. At the same date, approximately 92% of the value of its equity portfolio was represented by stocks of insurance companies and the balance by bank stocks.

The Trust is currently managed under the direction of five Trustees. New trustees are elected by the Trustees in accordance with the Declaration of Trust without shareholder approval as permitted by Section 16(c) of the Act for a common-law trust existing on the date of enactment of the Act. The day-to-day decisions concerning operations and changes in the Trust's portfolio are made by two of the Trustees: Allan W. Fulkerson, the Chairman, President and Managing Trustee, and William W. Dyer, Jr., Vice President. The other three Trustees, William O. Bailey, a director and former Chief Executive Officer of MBIA, Inc., a publicly owned company engaged through a subsidiary in writing municipal bond insurance; John E. Beard, a partner in the Boston law firm of Ropes & Gray; and Ernest E. Monrad, Chairman of the Trustees of Northeast Investors Trust, a registered investment company, are

not interested persons of the Trust. No Trustee or officer of the Trust or the Adviser owns as much as 1% of the outstanding shares of the Trust.

The Trust acts as distributor of its own shares and will continue to do so under the plan of externalization. Distribution expenses will be paid by the Adviser from its own resources.

The Plan of Externalization

1. Reasons for externalizing. The principal reason which has caused the Trustees to propose that the Trust henceforth obtain investment advisory and management services from an external investment advisory firm is their belief that such a firm will have greater success than the Trust in attracting and retaining talented personnel through its ability to offer compensation incentives, including equity participation, in an independent entity. The attractiveness of such incentives will be enhanced by the possibility of growth in the size of assets under management through additional efforts to increase the Trust's assets and development and promotion of additional investment company products, which might be offered as new Trust series. The Advisor is presently the investment adviser to a limited partnership with a net asset value as of December 31, 1993 of approximately $47,700,000.

The Trustees have also been influenced by their belief that compliance by the Trust with federal and state securities laws will involve less interpretive review and be less costly if the Trust is externally managed, because the established regulatory framework governing investment companies has largely evolved in relation to externally managed funds.

2. The Adviser and the Agreement. In externalizing the Trust's investment advisory and management functions, the Trustees wish to retain the services of Mr. Fulkerson and Mr. Dyer because of their specialized experience as analysts of insurance company and bank stocks and their performance in managing the Trust over a long period. Mr. Fulkerson and

Mr. Dyer will, on the effective date of the Agreement, together own 90% of the capital stock and all of the voting stock of the Adviser. The remaining 10% of the capital stock of the Adviser, represented by non-voting stock, will be owned by Richard F. Cook, Jr., who is the Secretary of the Trust. The Agreement provides that the Adviser will (i) act as investment adviser to the Trust and in that capacity, subject to the supervision of the Trustees of the Trust, direct the investments of the Trust in accordance with its investment objectives, and (ii) provide certain management services to the Trust, all for a monthly fee equal to one-twelfth of the sum of seven-tenths of one percent (0.7%) of the first $250 million, and six-tenths of one percent (0.6%) of amounts exceeding $250 million, of the net asset value of the Trust at the end of the month. The Agreement also contains the provisions required in an investment advisory contract under Section 15 of the Act and certain other provisions, described below, designed to insure that the criteria developed by the Commission's staff for taking a no-action position under Rule 17d-1 on plans of externalization have been met. The Agreement will be effective on the first business day of the month following its approval by the Trust's shareholders, but not prior to July 1, 1994.

3. Approval of the Agreement. On June 11, 1993, Mr. Bailey and Mr. Beard were authorized by the Trustees to evaluate the proposed externalization of the Trust's management on behalf of the Trust and its shareholders. In evaluating the plan of externalization, Mr. Bailey and Mr. Beard were advised by independent legal counsel retained by them. On the basis of their evaluation, Mr. Bailey and Mr. Beard advised the other Trustees that in their opinion the proposed Agreement is fair and reasonable and in the best interests of the Trust and its shareholders, and on September 16, 1993, the Trustees unanimously voted to authorize the Agreement and to recommend to the Trust's shareholders that they approve it. The proposed Agreement was reviewed by the Adviser in 1994 on the

basis of 1993 operating expenses and the current net asset value of the Trust, and a modification was made in the formula for determining the advisory fee. The effect of the modification was to reduce the originally proposed advisory fee at net asset values up to $410 million and to increase the fee at net asset values higher than $410 million. The average net asset value of the Trust in 1993 was approximately $278 million, the highest in the Trust's history. Net asset value at April 29, 1994 was approximately $215 million. The proposed Agreement as so revised was reviewed by the disinterested Trustees and found by them to be fair and reasonable and in the best interests of the Trust and its shareholders, and on April 21, 1994 the Trustees again unanimously approved the Agreement and the recommendation to the Trust's shareholders that they approve it. Written approval of the Agreement by the holders of a majority of the outstanding shares of beneficial interest of the Trust will be solicited on the basis of proxy material filed with and cleared by the staff.

The Trust's expense ratio for 1993 was 0.82%, as compared to 0.85% on a pro forma basis had the proposed new investment advisory and management arrangements been in effect in that year. This represents a difference of $69,878, or 3.05% of the actual 1993 expenses, which would have been eliminated entirely if a senior analyst who joined the Trust in the fall of 1993 had served for the full year. The proposed arrangement will thus not result in a material increase in the Trust's operating expenses.

II. Applicability of Rule 17d-1 to the Plan of Externalization

No assets of the Trust will be transferred to the Adviser in connection with the plan of externalization; thus no issue is presented under Section 17(a) of the Act. The Trust presently makes rental payments for office space to an unaffiliated landlord as a permitted occupant under a lease to Massachusetts Fiduciary Advisors, Inc., a Massachusetts

corporation whose sole stockholder is Mr. Fulkerson. The furniture and equipment located at these premises is (except for certain equipment recently purchased by and owned by the Adviser) owned by Massachusetts Fiduciary Advisors, Inc. It is substantially fully depreciated and is now being made available for use without charge to the Trust. The office space, furniture and equipment will be made available to the Adviser on the same basis when the Agreement becomes effective. Under the Agreement the Adviser is obligated to provide to the Trust office space, equipment and facilities needed for its operations.

Section 17(d) of the Act and Rule 17d-l thereunder will, however, require the filing of an application for, and the grant by the Commission of, an exemptive order approving the plan as a "joint enterprise or . . . joint arrangement" unless the Agreement is an "investment advisory contract" under subsection (c) of the Rule. In earlier no-action letters (see National Aviation & Technology Corporation (available 2/16/79); Equity Strategies Fund, Inc. (available 7/3/86); The California Muni Fund and New York Muni Fund (available 12/29/86)) the staff has required, as a condition to taking a no-action position as to the applicability of Rule 17d-1 to plans of externalization, satisfactory assurances that the following areas of concern are satisfied under the plan:

1. The governing board (in this case the Trustees) of the investment company must remain in control of the company in fact;

2. The new external investment adviser must not obtain undue value from externalization; and

3. The new external adviser must not undertake any conflicting duties of loyalty which would affect its prior fiduciary duty to the company.

These concerns are addressed separately below.

1. The Trustees will remain in control of the Trust. The Trust will continue to be controlled by five Trustees, a majority of whom will not be interested persons of the Trust under the Act. Mr. Fulkerson will be Chairman of the Trustees, but the office will carry with it no special powers. The Trustees, as in the past, will hold formal quarterly meetings to review the Trust's affairs and will receive from the Adviser monthly statements detailing transactions in shares of the Trust and changes in the Trust's portfolio of investments. Informal discussions between Messrs. Fulkerson and Dyer and the other Trustees will continue. Further, to assure that the disinterested Trustees exercise primary responsibility over important areas of management, the Trustees will establish two new standing committees made up exclusively of the disinterested Trustees: an Audit Committee to recommend the selection of auditors, and to meet separately with the auditors to discuss the Trust's financial affairs and review audit procedures; and a Nominating Committee to recruit and recommend new trustees when vacancies occur. The proxy material of the Trust will be prepared under the supervision of the disinterested Trustees, who will also on behalf of the Trust review from time to time the policies and practices of the Adviser with respect to brokerage allocation. Thus the plan of externalization will not affect the control which the Trustees have heretofore exercised over the affairs of the Trust, and will strengthen the role of the disinterested Trustees in certain respects.

2. The Adviser will not obtain undue value from the plan of externalization. The cost to the Trust of obtaining investment advisory and management services under the Agreement will not be materially greater than the cost of such services provided internally and will be in line with industry norms. The Adviser will not propose any change in the method of computing the advisory fee during the first three years after the effective date of the Agreement. The initial compensation levels to be fixed by the Adviser for Messrs.

Fulkerson, Dyer and Cook and other key personnel heretofore employed by the Trust will not exceed the levels in effect for them in 1993. Moreover, the Adviser has advised the Trust that increases in fee revenue due to growth in the levels of the Trust's assets will be applied in part to strengthening the Adviser's professional staff and to the costs of promotional efforts on behalf of the Trust.

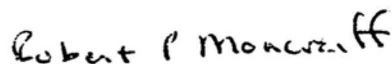
The earlier no-action letters referred to above reflect a concern of the Division of Investment Management as to a possible windfall to the stockholders of a new adviser to an investment company created under a plan of externalization as the result of the sale of the adviser at a profit shortly after implementation of the plan. To meet this concern, Messrs. Fulkerson, Dyer and Cook, who will be the Adviser's initial stockholders, will represent to the Trust that they have no present intention of selling any of their stock in the Adviser. Moreover, the Adviser will be obligated for a period of five years from the effective date of the Agreement to repurchase for its book value (which would exclude any value attributable to the Agreement) all of the stock of any stockholder upon the voluntary termination of such stockholder's employment. In the event of any sale of stock of the Adviser within three years from the effective date of the Agreement (otherwise than as the result of the death or disability of Mr. Fulkerson or Mr. Dyer), the selling stockholder will pay over to the Trust: (i) 100% of his "sale profit" (as defined below) if the sale occurs during the first year, (ii) 66 2/3% of his "sale profit" if the sale occurs in the second year, or (iii) 25% of his "sale profit" if the sale occurs in the third year. This undertaking would not apply to any merger, acquisition, affiliation or other restructuring designed to expand or strengthen the Adviser's activities and not involving the receipt by the Adviser's stockholders of cash or other readily marketable consideration, but any "sale profit" derived from the disposition of other consideration received by the Adviser's stockholders in such a transaction within three

years of the effective date of the Agreement would be subject to recapture by the Trust in accordance with the preceding sentence. For purposes of this undertaking, "sale profit" is an allocated portion of the excess of (A) the net proceeds derived from the sale, over (B) the book value of the Adviser attributable to the sold shares, but after reducing such excess by any cumulative operating loss incurred by the Adviser after the effective date of the Agreement. The "allocated portion" of the result obtained by applying the above formula would be that portion of such excess value which is fairly attributable to the Agreement with the Trust, as distinct from being attributable to income from other activities of the Adviser. The allocation would be proposed initially by the Adviser and approved by the disinterested Trustees of the Trust.

3. <u>The Adviser will not undertake any other conflicting duties of loyalty which would affect its prior fiduciary duty to the Trust.</u> The Adviser has given an undertaking to this effect in the proposed Agreement. To implement this undertaking, the Adviser has agreed for a period of five years from the effective date of the Agreement to give the Trust advance notice in writing of any proposed undertaking by it of material significance (including the taking on of any new clients) and to provide to the Trust all information relevant to a determination of the effect of such undertaking on the Adviser's ability to carry out its obligations to the Trust under the Agreement.

Questions, if any, concerning this request should be directed to the undersigned at (617) 573-0290.

Very truly yours,



Robert P. Moncreiff