BOULDER FUNDS

BOULDER TOTAL RETURN FUND, INC.

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November 12, 2010

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549
With copies to: Kyle R. Ahlgren, Senior Counsel

Re: Request for Interpretive Guidance Regarding Sections 18(i) of the Investment Company Act of 1940, as amended

Dear Mr. Scheidt:

We are writing to request the views of the staff of the Division of Investment Management (the "**Staff**") with respect to the interpretation of Section 18(i) of the Investment Company Act of 1940, as amended (the "**Act**"), in connection with the consideration by the Boulder Total Return Fund, Inc. (the "**Fund**") of whether to opt in to the provisions of the Maryland Control Share Acquisition Act (the "**MCSAA**").

Background

The Fund is a diversified, closed-end management investment company registered under the Act. It was organized on December 21, 1992 as a Maryland corporation. Boulder Investment Advisers, L.L.C. ("**BIA**") and Stewart West Indies Trading Company, Ltd., a Barbados international business company doing business as Stewart Investment Advisers ("**SIA**"), serve as the Fund's co-investment advisers. SIA is solely owned by Stewart West Indies Trust, which is an "affiliated person" of the Fund as that term is defined in the Act. BIA is owned by Evergreen Atlantic, LLC, a Colorado limited liability company, and the Lola Brown Trust No. 1B (the "**Trust**"),[1] each of which is also considered to be an "affiliated person" of the Fund. Fund Administrative Services, LLC and ALPS Fund Services, Inc. serve as co-administrators to the Fund. The Fund's common shares are registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, and have been listed and continuously traded on the New York Stock Exchange since inception.

The Board of Directors of the Fund (the "**Board**") is considering the adoption of a resolution to elect that the Fund become subject to the MCSAA.[2] The MCSAA eliminates the voting rights of

[1] Stewart Horejsi, the portfolio manager for BIA and SIA, is the grandson of Lola Brown and adviser to the Trust.

[2] Md. Corps. & Ass'ns Code §§ 3-701 through 3-710.

stockholders to the extent they acquire in excess of 10% of the outstanding common shares of a target company. The statutory purpose of the MCSAA is to deter hostile takeovers or tender offers with respect to a target company because (a) the prospective acquirer knows that if it acquires more than 10% of the voting power of the target company, it will not be able to vote those shares (unless approved by the board or by a 2/3 vote of other stockholders), and (b) it renders a proxy contest with respect to the target company more difficult since it limits the acquirer's power to vote in the proxy contest to only 10% of the outstanding shares of the company (regardless of actual ownership of shares in excess of this percentage).[3]

The Board is concerned, however, that in light of the decision of the United States District Court in *Neuberger Berman Real Estate Income Fund Inc. v. Lola Brown Trust No. 1B,* 342 F. Supp.2d 371 (D. Md. 2004) ("***Neuberger***"),[4] the MCSAA, when implemented as an anti-takeover measure for the Fund in the manner discussed above, might result in a violation of Section 18(i) of the Act. In *Neuberger* the court did not directly address defendants' allegations that the "control share" provisions of the MCSAA violated Section 18(i). We believe that given the provisions and common interpretation of Section 18(i), as well as the policy considerations set forth in Section 1(b)(3) of the Act (as discussed below), there is a reasonable chance that the Commission, if presented with these facts, could conclude that Section 18(i) might be violated (directly or indirectly through application of Section 48(a) of the Act) if the MCSAA is applied to a controlling stockholder of the Fund in the manner proposed.

Discussion

The MCSAA and Section 18(i)

Section 18(i), in relevant part, requires that all stock issued by a registered investment company "shall be a voting stock and have equal voting rights with every other outstanding voting stock," except as provided in Section 18(a)(2) or as otherwise required by law.[5] The Act does not contain a specific definition of "equal voting rights" in Section 18(i), and there is no discussion of this term in the legislative history of the Act. Recognizing this, the Commission, in *In the Matter of the Solvay American Corporation* ("***Solvay***"),[6] stated that it must rely on the general purposes of the Act[7] to determine the meaning of the "equal voting rights" requirement and established a principle of reasonableness for determining the meaning of this term within the context of Section 18(i) in particular and the Act in general. In *Solvay*, the Commission applied this reasonableness approach in concluding that although the holders of preferred stock had the

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[3] The MCSAA states, in part, that "control shares of the corporation acquired in a control share acquisition have no voting rights except to the extent approved by the stockholders at a meeting" in which there is an "affirmative vote of two-thirds of all votes entitled to be cast on the matter." Md. Corps. & Ass'ns. Code § 3-701(a)(1).

[4] We note that affiliates of BIA and SIA were defendants in *Neuberger*.

[5] Section 18(a)(2) entitles the holders of preferred stock, voting as a class, to elect at least two directors of a closed-end fund's board and, generally, to elect a majority of the members of the fund's board if at any time dividends to which such holders are entitled have not been paid for two years.

[6] 27 S.E.C. 971, 973 (April 12, 1948).

[7] The Commission referred to Section 1(b)(3) of the Act, which states in relevant part that "the national public interest and the interest of investors are adversely affected when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities."

right, as a separate class, to elect certain directors and to vote on matters of particular interest to the preferred stockholders, the voting provisions of the two classes of stock in that proceeding did not violate Section 18(i) of the Act.

In a few no-action letters, the Staff has taken a similar reasonableness approach in deciding to grant no-action assurance to the requesting parties. In *Drexel Burnham Lambert, Inc.,* SEC No-Action Letter (June 14, 1989) ("***Drexel***"), a registered closed-end management investment company proposed to issue taxable auction rate preferred stock ("**TARPs**") as well as common stock. The common stock was to be offered at $10 per share and the TARPs at $100,000 per share. Each share of common stock was to have one vote, and the TARPs would be entitled to either one vote or 100 votes per share. The Staff granted the requested no-action assurance regardless of whether the voting rights of the TARPs were one vote or 100 votes per share. The Staff granted similar no-action assurance in *Allstate Municipal Premium Income Trust,* SEC No-Action Letter (July 14, 1989), and *Zenith Income Fund, Inc.,* SEC No-Action Letter (April 27, 1988), with respect to differential voting rights for holders of preferred stock and common stock.[8]

In *Solvay* and in the various no-action letters that have addressed the meaning of "equal voting rights" for purposes of Section 18(i), the interpretation of this term involved its application to different classes of stock--in most cases, preferred stock and common stock. We are not aware of any instance in which the Commission or Staff has interpreted this term to provide for differential voting rights for members of the same class of stock of a registered closed-end management investment company, particularly common stockholders. In addition, in granting no-action relief in some of these letters, the Staff has provided some indication of the meaning of the expression "as otherwise provided by law" in Section 18(i) of the Act. The Staff appears to interpret this expression to permit unequal voting rights across classes of shares where state law permits a class vote on all matters for which the class concerned might otherwise be materially adversely affected.[9]

In light of the foregoing, it does not appear that the MCSAA, when applied to a controlling stockholder of a registered closed-end management investment company, satisfies the basis on which the Staff has permitted unequal voting rights for purposes of Section 18(i) of the Act. Under this provision, a Fund stockholder who acquires "control shares" would lose his or her voting rights with respect to those shares held in excess of the 10% threshold unless approval of two-thirds of all votes entitled to be cast on the matter (except for shares owned by the controlling stockholder and by officers or directors who are employees of the Fund) is obtained. Divesting a controlling stockholder of the Fund in this manner does not appear to fit within the reasonableness approach or the separate class justification present in each of the foregoing proceedings and letters in which the Commission or its Staff have been willing to provide relief from Section 18(i). Rather, the MCSAA, when applied to a controlling stockholder of the Fund, results in disparate voting rights being applied to members of the same class, and there is no adverse effect visited upon all members of that class (or another class) to justify differential voting treatment in these circumstances.

We are aware of a line of argument, similar to arguments made in the *Neuberger* case in connection with the rights plan at issue in that case, that seeks to distinguish between "shares"

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[8] *See also Merrill Lynch Dual Fund, Inc.,* SEC No-Action Letter (Aug. 14, 1985), and *Gemini II, Inc.,* SEC No-Action Letter (Mar. 14, 1985) (both involving no-action relief from Section 18(i) with respect to the voting of income shares and capital shares).

[9] *See, e.g., Merrill Lynch Dual Income Fund, Inc.*, SEC No-Action Letter (Aug. 14, 1985).

and the "person holding the shares".[10] Under this view, the MCSAA would not be considered inconsistent with the "equal voting rights" provision of Section 18(i) because, after opting in to the MCSAA, the Fund would still have outstanding "shares" with equal voting rights. The effect of the MCSAA once applied to a controlling stockholder, under this argument, is merely to temporarily disable the person who willingly assumes the position of controlling stockholder. The shares themselves remain unchanged and retain their voting characteristics consistent with Section 18(i).[11] It is not clear to us, however, that this line of reasoning fits within the reasonableness approach of *Solvay* and the no-action letters cited above, nor does it appear to fit the separate class justification present in these Commission and Staff positions.

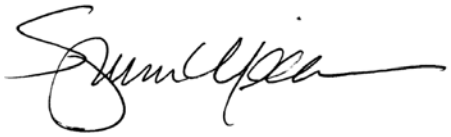
For these reasons, we seek the Staff's view on whether Section 18(i) might be deemed to be violated directly or indirectly in the foregoing circumstances.

Conclusion

In light of the foregoing, we respectfully request that the Staff provide us with its views as to whether the Fund, by opting in to the MCSAA, would act in a manner consistent with Section 18(i).

We have enclosed seven (7) copies of this no-action request for your convenience. Please contact me or my colleague, Jennifer Welsh, Associate General Counsel and Chief Compliance Officer of the Fund, at (303) 442-2156 with questions or comments regarding this letter.

Sincerely,



Stephen C. Miller

President and General Counsel

Cc: Arthur L. Zwickel, Esq., Paul, Hastings, Janofsky and Walker LLP
The Board of Directors of Boulder Total Return Fund, Inc.
Boulder Investment Advisers, LLC
Stewart Investment Advisers, Ltd.

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[10] *See, e.g.,* Hanks, Jim, "*Maryland Law: Continuing Support for Investment Companies,"* Investment Lawyer (September, 2004). The article concludes: "It is our view that the [MCSAA]…does not violate Section 18(i), primarily because the restrictions apply only to the holders of aggregate numbers of shares…that exceed certain percentages of…outstanding common stock of a corporation and do not apply to the shares themselves." *See, also*, Hanks, Jim, "*Protecting Closed-End Investment Companies under Maryland Law*" Venable LLP Clients and Friends Memo (May 12, 2010).

[11] See for example *Neuberger* at 376 (triggering of poison pill affects "economic interest and relative voting power", but "has nothing to do with the voting rights of the shares themselves"; the shares with respect to which the acquiring control stockholder cannot exercise voting power can be freely voted in the hands of another, non-controlling stockholder).