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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

December 21, 1981

SECURITIES AND EXCHANGE COMMISSION
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& INFORMATION SERVICES

Act ICA-40
Section 17(f)
Public Availability 2/17/82

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
500 N. Capitol Street, N.W.
Washington, D.C. 20549

SIFE Trust Fund:
Investment Company Act of 1940--§18(f)

Dear Sir:

We are counsel to SIFE Trust Fund (the "Company"), an open-end, diversified investment company registered under the Investment Company Act of 1940 (the "1940 Act"), and as such are writing to you on its behalf to seek an interpretation of the guidelines prescribed by the staff of the Securities and Exchange Commission ("Commission") governing the lending of portfolio securities by investment companies registered under the 1940 Act. We would also like to take this occasion to confirm the staff's guidelines for the writing of call options.

The Company proposes to amend the prospectus contained in its registration statement on Form N-1 to permit the lending of its portfolio securities and the writing of covered call options by filing a post-effective amendment with the Commission in February, 1982. The purpose of this letter is to receive confirmation that the staff would not recommend enforcement action or delay the effectiveness of the amended registration statement if the Company lends its portfolio securities and writes call options in accordance with the following guidelines.

A. Lending of Portfolio Securities.

Although the creation of an obligation on the part of an investment company to return collateral upon the termination of a loan of portfolio securities may under certain circumstances involve the issuance of a senior security within the meaning of Section 18(f) of the 1940 Act, in our opinion the lending of securities would not be in violation of Section 18(f) if effected in accordance with the following guidelines which have been set forth by the staff in the no-action letters and releases cited:

1. Type and Amount of Collateral. At the time of the loan, the Company shall receive from or on behalf of a borrower collateral consisting of cash, securities issued or guaranteed by the United States government or its agency, irrevocable stand-by letters of credit issued by a bank, or any combination thereof, equal to not less than 100% of the market value of the securities loaned. See Montgomery Street Income Securities, Inc., Investment Company Act Release Nos. 9686 and 9726 (March 21, 1977 and April 19, 1977) ("Montgomery Street"); Adams Express Company (available October 20, 1979); Lionel D. Edie Capital Fund, Inc. (available May 15, 1975); Salomon Brothers (available May 4, 1975); Standard Shares, Inc. (available August 24, 1974); and State Street Bank and Trust Co. (available January 29, 1972 and September 29, 1972) ("State Street").

The Company understands that any cash collateral it receives in connection with loans of its portfolio securities may be commingled by its custodian with the investment company's cash and marketable securities so long as (a) the loan agreement allows such commingling and (b) the other guidelines with respect to loans of portfolio securities set forth below are complied with. See Merrill Lynch Capital Fund, Inc. (available March 9, 1978).

2. Additions to Collateral. The borrower shall agree to add to collateral to cover increases in the market value of the loaned securities over the amount of the cash collateral on deposit or, in the case of non-cash collateral, over the market value of such non-cash collateral. If the original collateral is reasonably calculated to cover such increases, the borrower shall be obligated to deposit additional collateral when the collateral on deposit appears to be inadequate. The Company shall require the deposit of additional collateral not later than the business day following the business day on which a collateral deficiency occurs or collateral appears to be inadequate as the case may be. See Montgomery Street; Salomon Brothers (available May 4, 1975); State Street.

3. Termination of Loan. The Company shall be entitled to terminate the loan at any time and the borrower, after notice, shall be obligated to redeliver the borrowed securities within five trading days. State Street.

4. Reasonable Return on Loan. The borrower shall agree (a) that the Company is to receive all dividends, interest or other distributions on loaned securities and (b) to pay to the Company a reasonable return on such loans either in the form of a loan fee or premium (which gives proper weight to prevailing interest rates, dividends, interest or other

distributions on the loaned securities, and any increase in the market value of such securities), or from the retention by the Company of part or all of the earnings and profits realized by the Company from the investment of cash collateral in high yielding short-term investments which give maximum liquidity to pay back the borrower when the securities are returned. See Montgomery Street; Salomon Brothers (available May 4, 1975); Standard Shares, Inc. (available August 29, 1974); State Street.

5. Fees Payable by the Company. The Company shall not be required to pay any fees in connection with a loan, except as follows. The Company shall be permitted to pay reasonable fees to a custodian where such fees are negotiated between the Company and the custodian, reduced to a written contract, and approved by the Company's directors. The Company shall also be permitted to pay fees to a loan broker provided:

(a) the broker has disclosed to the Company that it is possible to loan portfolio securities without incurring such fees,

(b) neither the loan broker nor any of its affiliates is an affiliated person of the Company, its investment adviser or any principal underwriter of the Company,

(c) the loan broker receives a written representation of the Company that the Company's Board of Directors or the Company's investment adviser, acting within the general guidelines established by the Company's Board of Directors, has determined that such fee is reasonable and based solely on the services rendered by such loan broker (see Montgomery Street; Bernard S. Canton (available October 13, 1973); Norman F. Swanton Associates (available October 13, 1973)), and

(d) if under the terms of a specific loan transaction there is to be a payment by the Company, either directly or through a loan broker, of any fee to the borrower, the Company's Board of Directors or the Company's investment adviser, acting within general guidelines established by the Company's Board of Directors, shall separately consider (before becoming obligated to make such payment) the reasonableness of any such payment and the reasonableness of the return to the Company after giving effect to such a payment. See Montgomery Street; Mutual of Omaha Shares, Inc. (available October 9, 1974); Adams Express Company (available October 9, 1974).

In addition, loan placement fees shall not be used to compensate any affiliated person or investment adviser of the Company or an affiliated person of such person or adviser. Mutual of Omaha Shares, Inc. (available October 9, 1974); Adams Express Company (available October 9, 1974).

The Company understands that as long as the Company's Board of Directors first approves the lending of its portfolio securities and the general limitations on such lending, including a general form of contract for such lending, the Company's Board of Directors may delegate to the investment adviser the authority to negotiate particular loans, provided that such a delegation would be consistent with the terms of the advisory contract. The Company understands that this in no way relieves the Company's Directors of their fiduciary duties. Salomon Brothers (available May 4, 1975); Mutual of Omaha Shares, Inc. (available October 9, 1974); Norman F. Swanton Associates (available October 13, 1973); Bernard S. Kanton (available August 24, 1973).

6. Voting of Loaned Securities. In the event management has knowledge that a material event will occur affecting securities on loan and in respect of which the holder of such securities will be entitled to vote or consent, the Company shall call the loan in time to vote or consent, or otherwise obtain rights to vote or consent. The Company understands that it may use any practicable and legally enforceable arrangement to ensure that its Directors are able to fullfill their fiduciary duty to vote proxies with respect to the loaned portfolio securities. For example, the third person to whom the borrower delivered the loaned securities and who holds record ownership might provide the borrower with an executed blank proxy, or an executed proxy voted in the manner which the lender wishes, which the borrower would then transmit to the lender for submission to the Company whose securities were being voted. See Salomon Brothers (available May 4, 1975).

7. Limitations on Percentage of Portfolio on Loan. The Company shall not make a loan, if, as a result, more than one-third of its total asset value (at market value computed at the time of making a loan) would be on loan. See Montgomery Street; Salomon Brothers (available May 4, 1974).

8. Shareholder Approval. Since the Company's fundamental policies as presently stated do not permit the lending of portfolio securities, shareholder approval of the change in investment policy will be obtained prior to engaging in the practice. See State Street.

9. Disclosures in Prospectus. In any prospectus it may be required to provide under the Securities Act of 1933, the Company shall disclose that: (a) one of its policies is the lending of portfolio securities, (b) the voting rights may pass with the lending of securities; however, the Directors will be obligated to call loans to vote proxies or otherwise obtain rights to vote or consent if a material event affecting the investment is to occur, and (c) the lending of portfolio

securities may adversely affect pass-through tax treatment afforded "regulated" investment companies by Subchapter M of the Internal Revenue Code. See State Street.

The Company requests confirmation that the staff would not recommend enforcement action or delay the effectiveness of the amended registration statement if it lends its portfolio securities in accordance with the guidelines discussed above.

B. Writing of Call Options.

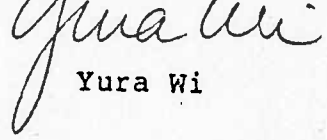
Although under certain circumstances the writing of an uncovered call option may involve the issuance of a senior security within the meaning of Section 18(f) of the 1940 Act, the staff has taken the position and we are of the opinion that the writing of call options by an open-end, diversified investment company is permissible if the investment company owns the securities against which the call is written. See Data Concepts Fund, Inc. (available August 25, 1980); Emerald Mgmt. Co. (available January 21, 1978). Accordingly, we respectfully request that the staff confirm that it would not recommend enforcement action or delay the effectiveness of the amended registration statement if the Company writes call options with respect to securities the Company owns provided that shareholder approval for such options is granted and the prospectus of the Company is amended to disclose the Company's fundamental policy with respect to the writing of call options.

C. Expedited Treatment Requested.

Since shareholder approval and an amendment to the Company's registration statement will be required before the Company may lend securities or write call options, the Company respectfully requests a response to this inquiry by January 15, 1982, in order that the Company might have sufficient time to prepare its preliminary proxy statement and post-effective amendment. We would appreciate having the opportunity to discuss this matter further with the staff if the staff is considering an adverse response to this request. Please feel free to call the undersigned collect at (415) 393-2116 if you have any questions or need further information.

Very truly yours,

McCUTCHEN, DOYLE, BROWN & ENERSEN

By 

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18 JAN 1982

Our Ref. No. 81-740-CC
SIFE Trust Fund
File No. 811-987

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Based on the representations in your letters of December 21, 1981, and January 12, 1982, we would not recommend that the Commission take any enforcement action under section 17(f) or section 18(f) of the Investment Company Act of 1940 against SIFE Trust Fund ("Company") if it lends its portfolio securities and writes covered call options in the manner set forth in your letters.

Stanley B. Judd
Deputy Chief Counsel

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COUNSELORS AT LAW
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TELEX 34-0817

January 12, 1982

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
500 N. Capitol Street, N. W.
Washington, D. C. 20549

Attention: Ms. Elizabeth Tsai

SIFE Trust Fund
Investment Company Act of 1940--§18(f):
Amendment to No-Action Request of December 21, 1981

Dear Ms. Tsai:

As we discussed in our telephone conversation this morning, we would like to amend our letter dated December 21, 1981 requesting, on behalf of our client, SIFE Trust Company (the "Company"), an interpretation of the guidelines prescribed by the staff of the Securities and Exchange Commission ("Commission") governing the lending of portfolio securities and the writing of call options by investment companies registered under the Investment Company Act of 1940 (the "1940 Act").

Specifically, we would like to change paragraph A(9) on pages 4 and 5 of the no-action request by deleting clause (c) concerning the disclosure that the lending of portfolio securities may adversely affect pass-through tax treatment afforded "regulated" investment companies by Subchapter M of the Internal Revenue Code of 1954 (the "Code"). As amended, paragraph A(9) should read in its entirety as follows:

> 9. Disclosures in Prospectus. In any prospectus it may be required to provide under the Securities Act of 1933, the Company shall disclose that: (a) one of its policies is the lending of portfolio securities, and (b) the voting rights may pass with the lending of securities; however, the Directors will be obligated to call loans, to vote proxies or otherwise obtain rights to vote or consent if a material event affecting the investment is to occur. See State Street.

In guideline (9) of State Street Bank & Trust Co. (available September 29, 1972) ("State Street"), the staff of the Commission required an investment company that lends its portfolio securities to disclose in its prospectus that the lending of portfolio securities may adversely affect pass-through tax treatment afford "regulated" investment companies by Subchapter M of the Code. At that time, it was not clear whether payments on the securities loans would be treated as dividend or interest income for the purposes of the 90% passive income requirement for Subchapter M treatment under Section 851(b)(2) of the Code.

Subsequent to State Street, Section 851(b)(2) of Subchapter M of the Code was amended by P.L. 95-345 (August 15, 1978), to permit payments on securities loans (as defined in Section 512(a)(5) of the Code) received by a regulated investment company to be treated in the same manner as dividends and interest in satisfying the 90% requirement of that section. This amendment would, in our opinion, obviate the need for disclosure by an investment company that the lending of portfolio securities may adversely affect pass-through tax treatment as expressed in State Street. Thus, we would like to amend our no-action request of December 21, 1981 as set forth above.

Once again, since shareholder approval and an amendment to the Company's registration statement will be required before the Company may lend securities or write call options, we respectfully request a response to our no-action request as modified by this amendment as soon as possible in order that the Company might have sufficient time to prepare its preliminary proxy statement and post-effective amendment. We would appreciate having the opportunity to discuss the matter further with the staff if the staff considers this amendment to adversely affect the response. Please feel free to call the undersigned collect at (415) 393-2116 if you have any questions or need further information.

Very truly yours,

McCUTCHEN, DOYLE, BROWN & ENERSEN

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