

PUBLIC

AUG 4 1992

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 91-470-CC
Founders Funds, Inc.
File No. 811-1018

By letter dated October 3, 1991, you request assurance that the staff would not recommend enforcement action to the Commission under the Investment Company Act of 1940 (the "1940 Act") if, as more fully described in your letter, Founders Funds, Inc. (the "Fund") deems Mr. Danson ("Danson") not to be an "interested person" of the Fund under Section 2(a)(19) of the 1940 Act.

You state that Danson is the director of international relations of Acciones y Valores de Mexico, S.A. de C.V. ("AVM Mexico"), a Mexican broker-dealer, and the president of AVM Mexico's U.S. subsidiary, AVM Securities, Inc. ("AVM United States"), a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 (the "1934 Act"). You state that AVM Mexico, which is not registered with the Commission under the 1934 Act, occupies a significant position in the Mexican securities markets, handling on average 15% of Mexico's daily stock trades and as much as 60% of all foreign assets invested in Mexican stocks.

The Fund is an open-end series investment company that has nine portfolios. Most of the portfolios may invest in the securities of issuers organized in foreign countries, including Mexico. From time to time, AVM Mexico executes portfolio transactions for the Fund.

Section 10(a) of the 1940 Act provides that no registered investment company shall have a board of directors more than 60% of the members of which are interested persons of the registered company. Section 2(a)(19)(A) defines an interested person to include any broker or dealer registered under the 1934 Act, or any affiliated person of a registered broker or dealer. Section 2(a)(3) of the 1940 Act defines affiliated person of another person to include any officer or director of such other person and any person directly or indirectly controlled by such other person.

The function of Sections 10(a) and 2(a)(19) "is to supply an independent check on management and to provide a means for the

registered broker-dealer. You assert that Danson's status as an affiliated person of AVM United States does not make him an interested person of the Fund because AVM United States has no material business relationship with the Fund, and thus he meets the requirements of rule 2a19-1 with respect to the Fund.

Because Danson's status as an affiliated person of AVM Mexico presents the same potential conflicts of interest that Sections 10(a) and 2(a)(19)(A) were designed to address, we cannot assure you that we would not recommend enforcement action to the Commission if the Fund deems Danson not to be an interested person. The staff faced a very similar question in First Australia Fund, Inc. (pub. avail. Sept. 8, 1987), which involved an individual who served on the board of directors of a registered investment company and who was to become chairman of the board of a company that controlled an Australian broker used by the investment company. In declining to provide any no-action assurances with respect to the individual's continued status as an independent director, we stated that "where an unregistered, non-United States broker-dealer enters into a business relationship with a registered investment company . . . and that broker-dealer would be required to be registered under the Exchange Act if its business activity with the company were performed in the United States, we believe that this clearly presents the same types of conflicts of interest that Congress sought to address in Section 2(a)(19)."

You propose, as a means of addressing the potential for conflict of interest, that the Fund would agree not to request that AVM Mexico execute any portfolio transactions on behalf of the Fund. You acknowledge, however, that given AVM Mexico's position in the Mexican securities market, other brokers employed by the Fund would be likely to effect some transactions through AVM Mexico. Thus, the extent to which the Fund invests in Mexican securities might affect AVM Mexico's business.

The fact that the Fund's trading activity could affect the business of AVM Mexico raises significant concerns about Danson's independence, e.g., whether Danson could be disinterested when reviewing the performance of the Fund's investment adviser if the adviser determined to cease investing in Mexican securities. Similarly, whether the Fund chose to invest in Mexican securities for which AVM Mexico made a market would also affect AVM Mexico's business. Danson may arguably be less objective about the advisory agreement or its renewal because of his interest in the adviser's giving business to AVM Mexico. Accordingly, we are not persuaded that limiting the Fund's direct dealing with AVM Mexico

as you propose in your alternatives would satisfy the policies underlying rule 2a19-1. 4/

A handwritten signature in black ink, appearing to read 'E. Nathans', with a long horizontal stroke extending to the right.

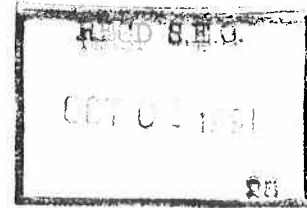
Eli Nathans
Special Counsel

4/ Of course, our response does not preclude Danson from serving as one of the Fund's "interested" directors.

MOYE, GILES, O'KEEFE, VERMEIRE & GORRELL

A LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

29TH FLOOR
1225 SEVENTEENTH STREET
DENVER, COLORADO 80202-5529
TELEPHONE (303) 292-2900
TELECOPIER (303) 292-4510



EDWARD F. O'KEEFE, P. C.

October 3, 1991

VIA FEDERAL EXPRESS

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Judiciary Plaza
Washington, D.C. 20549

Act	ICA-40
Section	2(a)(19)
Rule	
Public Availability	8/4/92

Re: Founders Funds, Inc.: File No. 2-17531
Request for No-Action Response

Ladies and Gentlemen:

This Firm represents Founders Asset Management, Inc. ("Founders"), the investment adviser and distributor for Founders Funds, Inc. (the "Fund"), which is an open-end, diversified registered investment company, registered under the Investment Company Act of 1940 (the "1940 Act"). The Fund is structured as a "series fund" having a total of nine separate portfolios, with a majority of the portfolios being capable of investing in the securities of foreign countries, including Mexico.

Statements of Fact and Law.

As of September 25, 1991, the Fund had a board of directors consisting of seven individuals, one of whom is an "interested person" as defined in Section 2(a)(19) of the 1940 Act, and six of whom are not interested persons of the Fund or of Founders.

On September 25, 1991, a majority of those directors of the Fund who are not interested persons (hereinafter referred to as "Independent Directors"), acting as a Committee on Directors composed of all of the Fund's Independent Directors, determined to select and nominate two individuals to serve as additional Independent Directors.

At a meeting of the board of directors of the Fund also held on September 25, 1991, the directors, including a majority of the Independent Directors, voted to appoint one of the individuals to a vacancy on the Fund's board of directors, and voted to appoint the other individual (hereinafter referred to as the "Conditional

Office of Chief Counsel
October 3, 1991
Page 2

Director") to a second vacancy on the board, subject to receiving certain assurances.

The Conditional Director is employed as the Director of International Relations of Acciones y Valores de Mexico, S.A. de C.V. ("AVM Mexico"), and also serves as the president of AVM Mexico's U.S. broker-dealer subsidiary, AVM Securities, Inc. (AVM United States").

According to an April 16, 1990 article which appeared in Forbes magazine, AVM Mexico, located in Mexico City, Mexico, handles on an average day 15% of Mexico's stock trades, and as much as 60% of all foreign funds invested in Mexican stocks.

AVM Mexico is not registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). AVM United States is registered as a broker-dealer under the Exchange Act.

Section 2(a)(19)(A)(v) of the 1940 Act defines an interested person of another person to mean, when used with respect to an investment company, any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer.

Since the Conditional Director is the president of AVM United States, he is an affiliated person of a broker or dealer registered under the Securities Exchange Act of 1934. As a Fund director, he would be an interested person of the Fund unless he would be excluded therefrom as a result of the application of Reg. § 270.2(a)(19)-1 under the 1940 Act (the "Rule").

The Rule provides as follows:

- (a) A director of a registered investment company will not be considered an interested person, as defined by section 2(a)(19) of the Act, of such company or of any investment adviser of or principal underwriter for such company solely because that director is a broker or dealer registered under the Securities Exchange Act of 1934 or an affiliated person of a registered broker or dealer, provided that:
 - (1) The broker or dealer does not execute any portfolio transactions for the Company's complex, engage in any principal transaction with the complex or distribute shares for the complex for at least six

Office of Chief Counsel
October 3, 1991
Page 3

months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person;

- (2) The Company's board of directors determines that the Company and its shareholders will not be adversely affected if the broker or dealer does not execute any portfolio transactions for the Company, engage in any principal transactions with the Company or distribute any shares of the Company; and
 - (3) No more than a minority of the directors of the Company who are not interested persons of the Company are registered brokers or dealers or affiliated persons of registered brokers or dealers.
- (b) For purposes of this rule, "complex" shall mean the registered investment company, its investment adviser (including all accounts over which the adviser has brokerage placement discretion), its principal underwriter and all other investment companies having the same investment adviser or principal underwriter.

Alternative One.

The Fund requests that the SEC Staff confirm that the Staff would not recommend any enforcement action to the Securities and Exchange Commission ("SEC") if the Conditional Director serves as a director of the Fund and is not designated as an interested person of the Fund under Section 2(a)(19) of the 1940 Act, so long as the Fund and Founders act as follows:

1. AVM United States will not execute any portfolio transactions for the complex, as the term "complex" is defined in the Rule, and will not engage in any principal transactions with the complex or distribute shares for the complex.
2. The Fund's board of directors will have determined that neither the Fund nor its shareholders will be affected adversely if AVM United States does not, in the future, execute any portfolio transactions for the Fund, engage in any principal transactions with the Fund, or

Office of Chief Counsel
October 3, 1991
Page 4

distribute any shares of the Fund. This determination will likely be based upon the fact that the complex has never used AVM United States to execute any portfolio transactions, to engage in any principal transactions, or to distribute shares, and does not anticipate any reason why the Fund might wish to utilize AVM United States for any such purpose or purposes in the future.

3. No more than a minority of the directors of the Fund who are not interested persons thereof will be registered brokers or dealers or affiliated persons thereof. At present, no director of the Fund is a registered broker or dealer or is an affiliated person of a registered broker or dealer.

Alternative Two.

Alternatively, we request that the Staff confirm that it would not recommend any enforcement action to the SEC if the Conditional Director serves as a director of the Fund and is not designated as an interested person of the Fund under Section 2(a)(19) of the 1940 Act, so long as the Fund and Founders act as follows:

- (a) The Fund and Founders comply with the circumstances outlined in items 1, 2 and 3 above.
- (b) AVM Mexico will not be requested by the complex, either directly or indirectly, to execute any portfolio transactions for the complex, and will not engage in any principal transactions with the complex or distribute shares for the complex.
- (c) The complex will place all orders for the purchase of securities of Mexican companies either with U.S. registered broker-dealers other than AVM United States or with Mexican broker-dealers other than AVM Mexico (hereinafter broker-dealer is referred to as such or simply as "broker").

If a U.S. broker were selected, the complex would give no direction to the U.S. broker with respect to the Mexican broker which the U.S. broker should utilize in effecting the securities transaction. In other words, the complex would not "direct" the U.S. broker to use AVM Mexico or any other Mexican broker. The U.S. broker would itself choose either to effect the complex's transaction through

Office of Chief Counsel
October 3, 1991
Page 5

AVM Mexico, or to use another Mexican broker. In some circumstances, AVM Mexico might be the only Mexican broker through which the Mexican securities could be purchased. In such an instance, of course, the U.S. broker would have to select AVM Mexico to effect the transaction.

Discussion of Alternative One.

With respect to Alternative One, it is simply the position of the Fund and of Founders that since Mr. Danson is an affiliated person of a broker-dealer registered under the Exchange Act, he may serve as an Independent Director if, and only if, the Fund and Founders conform to the requirements of the Rule. Since Section 2(a)(19) does not deem the Conditional Director to be an interested person because of his affiliation with a brokerage firm which is not registered under the Exchange Act, the Conditional Director's affiliation with AVM Mexico does not cause him to be deemed an interested director, the Rule is not applicable, and the Fund and Founders are free to effect securities transactions directly with AVM Mexico.

In this regard, it is possible that in the future, the SEC by Order may determine the Conditional Director to be an interested person under Section 2(a)(19)(A)(vi) of the 1940 Act, by reason of the Conditional Director's having had a material business or professional relationship with the Fund. Such a determination by the SEC might result from the extent to which the Fund and Founders were utilizing AVM Mexico to execute portfolio transactions, engage in principal transactions, or distribute shares for the complex. Any such material business or professional relationship between the Fund and/or Founders and AVM Mexico is not anticipated.

Discussion of Alternative Two.

If the Staff of the Commission determines that the relationship of parent and wholly-owned subsidiary between AVM Mexico and AVM United States is one which would require each entity to be the alter ego of the other for purposes of interpretation of Section 2(a)(19)(A)(v), thus precluding the Conditional Director from being an Independent Director unless the requirements of the Rule are complied with with respect to both AVM Mexico and AVM United States, Alternative Two is presented as a means by which the Fund and Founders may comply with the Rule with respect to both brokerage entities. Pursuant to Alternative Two, AVM Mexico will not be executing any portfolio transactions for the complex. AVM

Office of Chief Counsel
October 3, 1991
Page 6

Mexico might execute portfolio transactions on behalf of a U.S. broker for the account of the Fund or Founders, but only if it is selected by the U.S. broker, without the selection having been influenced by the complex.

Conclusion:

On the basis of the foregoing, it is requested that the Staff confirm our opinion that if the Fund and Founders conform to the actions described under Alternative One, the Conditional Director will not be deemed to be an interested person with respect to the Fund or Founders under Section 2(a)(19)(A)(v) of the 1940 Act. If the Staff is unable to provide confirmation with respect to Alternative One, it is requested that the Staff confirm our opinion that the Conditional Director is not an interested person with respect to the Fund or its investment adviser under the aforesaid section, so long as the Fund and Founders act as described under Alternative Two herein. In either instance, we respectfully request that the Staff advise us that it would not recommend any enforcement action to the SEC if the Fund elects the Conditional Director to the board of directors of the Fund as an Independent Director.

Thank you for your consideration of this request. The undersigned would be happy to discuss this matter with representatives of the Staff at the Staff's convenience.

Very truly yours,

MOYE, GILES, O'KEEFE,
VERMEIRE & GORRELL

By: Edward F. O'Keefe, P.C.

By: 
Edward F. O'Keefe, President

EFO:jah
cc: Bjorn K. Borgen, President
Founders Asset Management, Inc.