

**PUBLIC**

NOV 8 1995

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 95-511-CC  
The Riverfront Funds,  
Inc.  
File No. 811-6082

Your letter dated September 6, 1995 requests our assurance that we would not recommend that the Commission take any enforcement action against the Riverfront Funds, Inc., a registered investment company (the "Company"), or The Riverfront Stock Appreciation Fund, one of six series of the Company (the "Fund") if (1) during the Fund's fiscal year ending September 30, 1995, the Fund's securities and similar investments are verified once by its independent public accountants, and (2) during the Fund's fiscal period ending December 31, 1995, the Fund's securities and similar investments are verified twice by its accountants.

You state that the Company, on behalf of the Fund, has entered into agreements with The Provident Bank (the "Bank") pursuant to which the Bank will provide investment advisory, custodial, depository, and fund accounting services to the Fund. You further state that the Company has, since 1990, complied with the verification requirements of Rule 17f-2(f) under the Investment Company Act of 1940 (the "1940 Act") with respect to each of its other five series. 1/

You state that the Company has entered into an Agreement and Plan of Reorganization and Liquidation with MIM Mutual Funds, Inc., another registered investment company ("MIM"), pursuant to which three series of the Company, including the Fund, will acquire all of the assets and assume all of the stated liabilities of the six series of MIM (the "Reorganization"). In contemplation of the Reorganization, the Fund was organized to acquire all of the assets and assume all of the liabilities of two series of MIM, the Stock Growth Fund and the Stock Appreciation Fund (the "Acquired Funds"). The Fund had no assets or liabilities and did not commence operations until completion of the Reorganization, which was effected as of September 30, 1995.

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1/ Under Rule 17f-2(f), an investment company must have its securities and similar investments verified by actual examination by an independent public accountant at least three times during each fiscal year. At least two of these examinations must be at times chosen by the accountants without prior notice to the fund. The staff has taken the position that, where a bank serves both as custodian and investment adviser to a fund, the requirements of Rule 17f-2(f) apply. See The Mutual Fund Group (pub. avail. Dec. 12, 1989); Pegasus Income & Capital Fund, Inc. (pub. avail. Dec. 31, 1977).

You state that, for purposes of performance and accounting treatment, the Company and its independent accountants determined that MIM Stock Appreciation Fund would be considered the survivor of the Reorganization involving the Fund and the Acquired Funds. 2/ The fiscal year end of MIM and each of the Acquired Funds is September 30. Therefore, the Fund had one-half day of operations prior to the end of its fiscal year during which it was subject to the self-custody requirements of Rule 17f-2. 3/

You further state that, following the Reorganization, the Board of Directors of the Company is expected to change the fiscal year end of the Fund from September 30 to December 31 in order to conform the Fund's fiscal year with the other series of the Company. Accordingly, the Fund's first full fiscal period after completion of the Reorganization will be a three-month period, from October 1, 1995 through December 31, 1995.

With respect to the Fund's fiscal year ending September 30, 1995, you represent in your letter that a regular verification of the Fund's securities and other investments will be performed on September 30, 1995 in connection with the Fund's fiscal year-end audit. You assert, however, that it would, for all practicable purposes, be impossible to perform two additional "unannounced" verifications on that day.

With respect to the Fund's fiscal period ending December 31, 1995, you believe that requiring three verifications within a three-month period does not further the policies underlying Rule 17f-2 and imposes an unnecessary cost on Fund shareholders. You propose to have one "surprise" verification, in addition to the Fund's regular fiscal year-end verification.

We would not recommend enforcement action to the Commission under Section 17(f) or Rule 17f-2(f) thereunder if (1) during the fiscal year ending September 30, 1995, the Fund's securities and similar investments are verified once by its accountants, such verification being the Fund's regular fiscal year-end

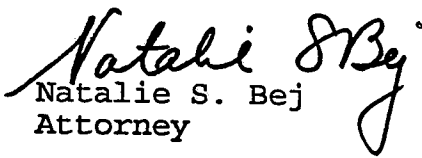
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2/ We express no opinion with respect to your analysis of the treatment of MIM Stock Appreciation Fund as the surviving fund, as this is primarily a factual determination.

3/ MIM and the Acquired Funds are not subject to Rule 17f-2. As a result of the treatment of MIM Stock Appreciation Fund as the surviving fund, the Fund will have had previous operations when it was not otherwise subject to the self-custody rule.

verification; 4/ (2) during the Fund's three-month "stub" fiscal period ending December 31, 1995, the timing of one verification is chosen by the accountants without prior notice to the Company or the Fund and the other is the Fund's regular fiscal year-end verification; 5/ and (3) in all subsequent fiscal years of the Fund, three verifications will be made per year in accordance with Rule 17f-2(f).

This response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the questions presented. Because this position is based on the facts and representations made in your letter, you should note that any different facts or circumstances might require a different conclusion.

  
Natalie S. Bej  
Attorney

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4/ Because of the brief period between the receipt of your request and the Fund's fiscal year end, we informed counsel of this position in a telephone conversation between Natalie S. Bej and Kristin H. Ives on September 28, 1995.

5/ See Morgan Stanley Emerging Markets Fund, Inc. (pub. avail. Dec. 30, 1991); The Sessions Group (pub. avail. March 26, 1990). In The Seven Seas Series Fund (pub. avail. May 26, 1988), the staff stated that, as a general matter, it will not grant no-action relief under Rule 17f-2(f) in situations involving either (i) a change in a fund's fiscal year-end during any year of operations, or (ii) a stub fiscal year of six months or more for a fund's first fiscal year of operations. As a result of the Reorganization, the Fund will change its fiscal year-end to conform to the other series of the Company. We believe that this distinguishes the Fund from a fund with ongoing operations that decides to change its fiscal year for operational purposes.

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&  
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WRITER'S DIRECT DIAL NUMBER (614)

Investment Company Act of 1940  
Rule 17f-2(f)

September 6, 1995

Jack W. Murphy, Esq.  
Office of the Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

ACT ICA  
SECTION \_\_\_\_\_  
RULE 17f-2(f)  
PUBLIC  
AVAILABILITY 11/8/95

Subject: The Riverfront Funds, Inc. (the "Company") --  
Securities Act of 1933 Registration No. 33-34154,  
Investment Company Act of 1940 File No. 811-6082

Dear Mr. Murphy:

We hereby request that you advise us that the Division of Investment Management (the "Division") will not recommend that the Securities and Exchange Commission (the "Commission") take action against the Company or The Riverfront Stock Appreciation Fund, one of six series of the Company (the "Fund"), if for both the Fund's fiscal year ending September 30, 1995, and the Fund's fiscal period ending December 31, 1995, the Fund's securities and similar investments are not verified by its independent public accountants each of the three times required under Rule 17f-2(f) of the Investment Company Act of 1940, as amended (the "1940 Act"). For the reasons stated below, the verifications for the year ending September 30, 1995, would include the Fund's regular year-end verification only, and the verifications for the period ending December 31, 1995, would include the Fund's regular year-end verification and one chosen by the Company's independent public accountants without prior notice.

**BACKGROUND**

The Company is a Maryland corporation which has registered as an open-end, management investment company pursuant to the 1940 Act. The Company's initial series were declared effective with the Commission on or about August 9, 1990, and an amendment to the Company's Registration Statement adding the Fund was declared

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effective on July 6, 1995. The Company has engaged Ernst & Young LLP as its independent public accountants for its fiscal year ending December 31, 1995.

The Company, on behalf of the Fund, has entered into an Investment Advisory Agreement and an Amended and Restated Custodian, Fund Accounting and Recordkeeping Agreement with The Provident Bank, Cincinnati, Ohio (the "Bank"), pursuant to which the Bank will provide investment advisory and custodial, depository and fund accounting services, respectively, to the Fund. The Company has, since August 1990, complied with the verification requirements of Rule 17f-2 with respect to each of its other five series.

The Company has also entered into an Agreement and Plan of Reorganization and Liquidation dated as of June 26, 1995 (the "Plan"), with MIM Mutual Funds, Inc. ("MIM"), another open-end, management investment company. Pursuant to the terms of the Plan, three series of the Company, including the Fund (collectively, the "Acquiring Funds"), will acquire all of the assets of the six series of MIM (collectively, the "Acquired Funds"), in exchange for the assumption of such Acquired Funds' liabilities and a number of full and fractional Investor A shares of the relevant Acquiring Funds of the Company having an aggregate net asset value equal to such Acquired Funds' net assets (the "Reorganization"). In contemplation of the Reorganization, the Fund was organized to acquire all of the assets and liabilities of the Stock Appreciation Fund and the Stock Growth Fund of MIM. The Fund currently has no assets or liabilities and will not commence operations until completion of the Reorganization. The Company filed a Registration Statement on Form N-14 in connection with the Reorganization with the Commission on July 18, 1995, which became effective on August 17, 1995.

A Special Shareholders' Meeting of MIM will be held on September 27, 1995, to vote upon the Reorganization. If approved by MIM's shareholders, it is currently anticipated that the Reorganization will be effected as of September 30, 1995.

In preparation for the acquisition by the Fund of all of the assets and liabilities of the MIM Stock Appreciation Fund and the MIM Stock Growth Fund, the Company and its independent accountants have determined that, for purposes of performance and accounting treatment, the MIM Stock Appreciation Fund will be considered the survivor. Such determination was based upon an analysis of all relevant factors, including that the Fund will have investment objectives, policies and practices which are substantially identical to those of the MIM Stock Appreciation Fund, the portfolio manager of the MIM Stock Appreciation Fund will become the portfolio manager of the Fund after the Reorganization, the

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portfolio manager intends to continue managing the Fund after the Reorganization in the same manner as he had managed the MIM Stock Appreciation Fund, and, as between the MIM Stock Appreciation Fund and the MIM Stock Growth Fund, the MIM Stock Appreciation Fund has significantly greater assets. See, e.g., North American Security Trust (available August 5, 1994). The fiscal year end for MIM and each of its Acquired Funds is September 30. The current custodian for all series of MIM is not affiliated with such series' investment adviser or MIM.

As a result of the treatment of the MIM Stock Appreciation Fund as the survivor of the Reorganization involving the Fund, the MIM Stock Appreciation Fund and the MIM Stock Growth Fund, the Company and its accountants have determined that a full audit of the Fund will be necessary as of the close of business on September 30, 1995. In addition, in order to cause the Fund's fiscal year thereafter to conform with the other series of the Company, the Company's Board of Directors is expected to change the fiscal year end of the Fund to December 31, thereby creating for the Fund a short fiscal period ending December 31, 1995. Thereafter, all series of the Company will have the same fiscal year end, December 31.

Rule 17f-2(f) of the 1940 Act applies to registered investment companies which maintain in their own custody their securities and similar investments, and generally provides that during any fiscal year an independent public accountant must verify such company's securities and similar investments at least three times a year, at least two of which shall be at the selection of the accountant without prior notice to the company. The Commission's staff has interpreted Rule 17f-2(f) as also applying to a registered investment company whose investment adviser also serves as its custodian. Pegasus Income & Capital Fund, Inc. (available December 31, 1977); Carnegie-Cappiello Growth Trust (available August 8, 1985).

Rule 17f-2 is clear as to its application to full fiscal years. Whether the Rule requires three audits in the Fund's first fiscal year during which it becomes subject to Rule 17f-2 or during short fiscal periods, however, is unclear.

#### **DISCUSSION AND ANALYSIS**

Upon completion of the Reorganization, the Fund will have one-half day of operations prior to the end of its fiscal year during which it is subject to the self-custody requirements of Rule 17f-2. In addition, the Fund's first full fiscal period after the completion of the Reorganization will be from October 1, 1995 through December 31, 1995. If Rule 17f-2(f)'s requirements are interpreted as being applicable to such time periods, then the

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Fund's securities and similar investments must be verified six times during the period of September 30, 1995 through December 31, 1995.

We believe for the one-half day, September 30, 1995, that the Fund will be subject to Rule 17f-2 during its current fiscal year, requiring two additional verifications, other than the one regular verification in connection with the Fund's fiscal year-end audit, does not further the policies underlying Rule 17f-2(f) and, thus, imposes an unnecessary cost on Fund shareholders and would be, for all practicable purposes, impossible to do.

With respect to the Fund's fiscal period ending December 31, 1995, we also believe that requiring three verifications within such a short period of time as three months does not further the policies underlying Rule 17f-2 and, thus, imposes an unnecessary cost on Fund shareholders with limited additional benefits.

In The Seven Seas Series Fund (available May 26, 1988), the Office of the Chief Counsel of the Division stated that it would not recommend enforcement action against The Seven Seas Series Fund under circumstances similar to those of the Fund in that The Seven Seas Series Fund's initial fiscal period was four months. The only differences between the facts of The Seven Seas Series Fund and those of the Fund are that the Fund, as a result of being the survivor of the Reorganization, will have had previous operations but was not otherwise subject to the self-custody rules of Rule 17f-2 and that the fiscal period of the Fund will be three months rather than the fourth months of The Seven Seas Series Fund.

While the staff in The Seven Seas Series Fund letter did not give any specific advice with respect to initial fiscal periods in the Fund's particular circumstances, in footnote no. 2 the staff did provide that "[a]s a general matter, the staff will not grant no-action relief in situations involving either a change in a fund's fiscal year-end during any year of operations or a stub fiscal year of six months or more for a fund's first fiscal year of operation."

While arguably the Fund's situation involves a change in the Fund's fiscal year, such a change is necessitated by the Reorganization. In addition, we believe that the Fund's situation is sufficiently different from that of a fund already subject to Rule 17f-2 with ongoing operations which decides to change its fiscal year for operational purposes to warrant an exception to the policy stated in such footnote no. 2. The change in the Fund's fiscal year to December 31 is needed in order to realize some of the economies anticipated by the Reorganization. It would be difficult and expensive to have one series of the Company with a fiscal year end different from that of the other five series of the

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Company. Thus, the change in the Fund's fiscal year end is necessitated by the effects of the Reorganization and not by some other operational consideration over which the Company has control.

The staff has stated that it is a principal policy of the 1940 Act, as expressed generally in Section 1(b)(5) and specifically in Section 17(f), to ensure that securities owned by investment companies are subject to adequate independent scrutiny. Pegasus Income & Capital Fund, supra. This policy is accomplished by requiring verification of the holding of investment companies by independent public accountants and, in the case of self-custody, an additional two surprise inspections by those accountants to reduce the likelihood of embezzlement and larceny.

In the case of the Fund, the policy of independent scrutiny would not be compromised by reducing the number or required verifications from three to one for the Fund's fiscal year ending September 30, 1995, and by reducing the number of required verifications from three to two for the Fund's fiscal period ending December 31, 1995. Three verifications, one a surprise and two at the end of the Fund's fiscal year ending September 30, 1995 and the end of the Fund's fiscal period ending December 31, 1995, are adequate in a three-month and one-half day period to protect the Fund's shareholders. Three additional verifications would increase the cost to shareholders with only nominal, if any, additional benefits.

#### CONCLUSION

Based on the discussion and analysis set forth above, we respectfully request that the Division not recommend that the Commission take action against the Company or the Fund if, (1) for the Fund's fiscal year ending September 30, 1995, the Fund's securities and similar investments are verified one time by its accountants, such verification being the Fund's regular year-end verification, and (2) for the Fund's fiscal period ending December 31, 1995, the Fund's securities and similar investments are verified two times by its accountants, one being a surprise verification and the other being the Fund's regular year-end verification. In all subsequent fiscal years of the Fund, three verifications will be made in accordance with the requirements of Rule 17f-2(f).



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In order to avoid the costs associated with additional verifications, we would appreciate your prompt attention to this matter. If we can be of any assistance in expediting your review or may answer any questions you may have, please do not hesitate to call us collect at (614)228-1541.

Yours very truly,

BAKER & HOSTETLER

*Kristin H. Ives*  
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