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8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30647; File No. 811-07528]

Special Opportunities Fund, Inc.; Notice of Application

August 8, 2013

Agency: Securities and Exchange Commission ("Commission").

Action: Notice of an application for a declaratory order under Section 554(e) of the Administrative Procedure Act of 1946 ("APA") concerning a proxy voting procedure under Section 12(d)(1)(F) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicant requests an order declaring that its proxy voting procedure does not cause the applicant to be in violation of Section 12(d)(1) of the Act.

Applicant: Special Opportunities Fund, Inc. ("SPE" or "Fund").

Filing Dates: The application was filed on December 13, 2011 and amended on November 5, 2012.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 3, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary. Absent a request for a hearing that is granted by the Commission, the Commission intends to issue an order under

Section 554(e) of the APA declaring that applicant's proxy voting procedure does not satisfy Section 12(d)(1)(F) of the Act.

Addresses: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicant, 615 East Michigan Street, Milwaukee, Wisconsin 53202.

For Further Information Contact: Adam Glazer, Senior Counsel, at (202) 551-6825, Division of Investment Management, Office of Chief Counsel.

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website at http://www.sec.gov/rules/ic/2012/special-opportunities-fund-application.pdf or by calling (202) 551-8090.

Applicant's Representations:

1. SPE is organized as a Maryland corporation and is registered under the Act as a closed-end management investment company. Brooklyn Capital Management, LLC ("Adviser"), a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940 and currently serves as investment adviser to SPE. SPE seeks to rely on Section 12(d)(1)(F) of the Act to invest its assets in securities of other investment companies registered under the Act ("underlying funds") that are closed-end investment companies, in excess of the limits in Section 12(d)(1)(A) of the Act.

2. On December 7, 2011, SPE's shareholders approved a proposal to "instruct the Adviser to vote proxies received by the Fund from any [underlying fund] on any proposal (including the election of directors) in a manner which the Adviser reasonably determines is likely to favorably impact the discount of such [underlying fund's] market price as compared to its net asset value" ("Voting Procedure"). SPE requests a declaratory order pursuant to Section

554(e) of the APA stating that the Voting Procedure "does not cause it to be in violation of Section 12(d)(1) of the Act."

Applicant's Legal Analysis:

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that it shall be unlawful for any registered investment company ("acquiring fund") to purchase or otherwise acquire any security issued by an underlying fund if immediately after such purchase or acquisition: (i) the acquiring company owns more than 3% of the underlying fund's total outstanding voting stock; (ii) securities issued by the underlying fund have an aggregate value in excess of 5% of the value of the acquiring fund's total assets ("5% limit"); or if such securities, together with the securities of other investment companies, have an aggregate value in excess of 10% of the value of the acquiring fund's total assets ("10% limit").

2. Section 12(d)(1)(F) of the Act provides a conditional exemption from the 5% and 10% limits in Section 12(d)(1)(A). Section 12(d)(1)(F) permits an acquiring fund to purchase or otherwise acquire shares of an underlying fund if, immediately after the purchase or acquisition, the acquiring fund and all of its affiliated persons would not own more than 3% of the underlying fund's total outstanding stock, and if certain sales load restrictions are met. Section 12(d)(1)(F) further provides that the underlying fund is not obligated to redeem, during any period of less than 30 days, securities held by the acquiring fund in an amount exceeding 1% of the underlying fund's outstanding securities. Finally, Section 12(d)(1)(F) provides that the acquiring fund "shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to [Section 12(d)(1)(F)] in the manner prescribed by [Section 12(d)(1)(E)]." Section 12(d)(1)(E)(iii), in turn, provides, in relevant part, that "the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for, the issuer of the

security whereby [the acquiring fund] is obligated either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security." The first alternative is referred to as "Pass-Through Voting Condition." The second alternative is referred to as "Mirror Voting."

3. SPE asserts that its Voting Procedure satisfies the Pass-Through Voting Condition. SPE states that it has been "unable to find anything in the legislative history of Section 12(d)(1) that provides any clue as to the reason for the [Pass-Through Voting Condition]." SPE further asserts that "there are good reasons for interpreting the [Pass-Through Voting Condition] to allow an acquiring fund to seek standing instructions to vote on proposals regarding acquired funds." In this regard, SPE asserts that it is not cost effective for an acquiring fund to obtain voting instructions for a particular underlying fund after it receives a proxy. SPE also states that "there is almost never sufficient time for an acquiring fund to seek and actually obtain instructions from its own shareholders as to how to vote a specific proxy solicited by a particular acquired fund." SPE further states that "SPE has no such relationship with any fund and it would be futile for SPE to try to persuade an unrelated acquired fund to transmit its proxy materials to SPE's stockholders."

4. SPE requests an order under section 554(e) of the APA declaring that the Voting Procedure "does not cause it to be in violation of Section 12(d)(1) of the Act." Section 554(e) of the APA provides that "[t]he agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." SPE states that, if the Commission issues the requested declaratory order, SPE intends to submit the Voting Procedure for shareholder approval on an annual basis "to insure

that its standing proxy voting instructions do not become stale."

The Commission's Preliminary Views:

1. Section 12(d)(1)(F) of the 1940 Act provides a conditional exemption from the restrictions in Section 12(d)(1)(A) on an acquiring fund purchasing or otherwise acquiring a security issued by an underlying fund. The legislative history of Section 12(d)(1)(A) suggests that these restrictions were designed, in part, to address the concern that an acquiring fund could be used by an investment adviser, among others, as a vehicle to control or unduly influence, through voting, threat of redemption or otherwise, an underlying fund for its own benefit and to the detriment of the shareholders of both funds.[1] The conditions contained in the exemption provided by Section 12(d)(1)(F), and in particular the condition requiring voting in accordance with Section 12(d)(1)(E)(iii), attempts to minimize the influence that an acquiring fund may exercise over an underlying fund through voting.[2]

2. Shortly after Section 12(d)(1)(F) was enacted in 1970, the Commission issued a release providing guidance on the various provisions enacted by the new legislation, including specifically the Pass-Through Voting Condition.[3] The 1971 Release stated that the Pass-Through Voting Condition in Section 12(d)(1)(F) "in effect, requires the fund holding company to make an arrangement with the issuer or principal underwriter of the issuer whereby

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[1] *See* U.S. SECURITIES AND EXCHANGE COMMISSION, INVESTMENT TRUSTS AND INVESTMENT COMPANIES, H.R. DOC NO. 279, 76th Cong., 1st Sess., pt. 3, at 2721-95 (1939).

[2] *See Fund of Funds Investments*, Investment Company Act Release No. 27399 (June 20, 2006) at n.11 and accompanying text.

[3] *Changes in the Investment Company Act of 1940 Made by the Investment Company Amendments Act of 1970 (P.L. 91-547) Relating to the Repeal and Modification of Exemptions for Certain Companies; The Pyramiding of Investment Companies and the Regulation of Fund Holding Companies; and Rescission of Rule 11b-1 under the Investment Company Act*, Investment Company Act Release No. 6440 (Apr. 6, 1971) ("1971 Release").

sufficient proxy solicitation or other material may be transmitted to the fund holding company's security holders so that their instructions may be obtained."[4] This approach addresses the concern underlying the restrictions in Section 12(d)(1)(A) – that the fund of funds' investment adviser or another affiliate not exercise undue influence over the management or policies of an underlying fund – by placing the voting of the underlying fund's proxies in the hands of the fund of funds' shareholders (rather than its investment adviser). Consistent with the Commission's analysis in the 1971 Release, the Commission interprets Section 12(d)(1)(F), through the incorporation of the requirement in Section 12(d)(1)(E)(iii), to require SPE, if it chooses the Pass-Through Voting Condition, to have an arrangement with each underlying fund or its principal underwriter whereby SPE will pass through the proxies to SPE's shareholders and vote according to their instructions.

3. In the Commission's preliminary view, SPE's Voting Procedure does not appear to be consistent with the purposes and policies behind Section 12(d)(1)(F) of the Act, or with the guidance that the Commission articulated in the 1971 Release. The Voting Procedure gives the Adviser broad discretion in voting the underlying funds' proxies and thus presents the potential for the Adviser to exercise undue influence over the management and policies of the underlying funds. As to SPE's assertion that soliciting proxies as described in the 1971 Release is "prohibitively expensive and logistically impractical," we note that Section 12(d)(1)(E) requires there to be "an arrangement" between the acquiring fund and an underlying fund concerning the voting of proxies, which suggests that at least the logistics of the Pass-Through Voting Condition could be addressed as part of "the arrangement." We also note that funds of funds similar to SPE

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[4] *Id*. at 4.

existed at the time the 1971 Release was issued and the Pass-Through Voting Condition was enacted as an alternative to Mirror Voting, yet Congress nevertheless determined the statutory conditions to be appropriate.[5] To the extent that SPE finds making "an arrangement" with an underlying fund under the Pass-Through Voting Condition "futile," SPE has the option of using Mirror Voting. Therefore, absent a request for a hearing that is granted by the Commission, the Commission intends to respond to SPE's application by issuing an order under Section 554(e) of the APA declaring that the Voting Procedure does not satisfy Section 12(d)(1)(F) of the Act.

By the Commission.

Kevin M. O'Neill
Deputy Secretary

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[5] *See Mutual Fund Legislation of 1967: Hearings on S. 1659 Before the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 882-891 (1967) (statement of Milton Mound, President, First Multifund of America, Inc.).