

5

DIVISION OF  
CORPORATION FINANCE

December 5, 1986

Mr. Robert E. Denham  
Munger, Tolles & Olson  
612 South Flower Street  
Los Angeles, California 90017-2885

PUBLIC AVAILABILITY DATE: 12-18-87		
ACT	SECTION	RULE
1934	13(d)	13d- 1
1934	--	Sch. 13G

Re: Warren E. Buffet; Berkshire Hathaway, Inc.

Dear Mr. Denham:

On the basis of the facts presented, it is this Office's opinion that Mr. Warren E. Buffet is not a person eligible to file on Schedule 13G pursuant to Rule 13d-1(b)(1)(ii). This position is based upon the recognition that the Commission in adopting this rule intended for its application to be limited to institutional investors and it was not the intention of the Commission to extend a short form filing privilege to the private investment portfolios of individuals who are also beneficial owners of securities held by institutional investors eligible to file on Schedule 13G. However, recognizing the desire of the Commission to make the filing obligation as efficient as possible, no objection will be raised if Mr. Buffet files a joint Schedule 13G with Berkshire Hathaway, Inc. provided that Mr. Buffet's individual holdings do not exceed 1% and a separate Schedule 13G cover sheet is filed. If Mr. Buffet's beneficial ownership of any equity securities exceeds 1% of such class exclusive of the holdings of Berkshire Hathaway, Inc., and its insurance subsidiaries he would have a Schedule 13D filing obligation.

Because this position is based upon the representations made to the Division in your letter it should be noted that any different facts or conditions might require a different conclusion. Further, this letter only expresses the Division's position on enforcement action and does not purport to express any legal conclusions on the question presented.

Sincerely,

*J. Conolly, Jr.*  
Joseph G. Conolly, Jr.  
Chief, Office of Tender Offers

**MUNGER, TOLLES & OLSON**  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
612 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90017-2888  
TELEPHONE (213) 683-9100

OCT 7 1986

000016

FREDERICK B. WARDEN, JR.  
(1932-1978)  
CABLE ADDRESS MUNTOLL  
TELEX 077674  
TELECOPIER (213) 489-1540

E. LEPOY TOLLES •  
NICHARD D. EISENBERG •  
TOM R. TAFT •  
DOUGLAS KRANTZWILLE  
SCOTT Z. JOHNSON •  
JAN V. FRIEDMAN •  
RONALD L. OLSON •  
DENNIS E. KUNHARD •  
SHAMON H. LOCKER •  
DENNIS C. BROWN •  
ROBERT E. DENHAM •  
JEFFREY I. WENDBERGER •  
MELVYN H. WILD •  
EDWIN W. WOODSONE, JR. •  
ALLEN H. BATE  
DANIEL R. GARCIA  
ALAN D. BERSIN  
ROBERT L. ADLER  
CARY B. LERMAN  
WILLIAM L. CATNEY, JR.  
CHARLES D. SIDBAL  
RONALD H. MEYER  
GRIGORY R. STONE  
VILMA S. MARTINEZ  
LUCY T. EISENBERG  
BRAD D. BRIAN  
BRADLEY S. PHILLIPS  
GEORGE H. SARVEY

RYTA J. MILLER  
D. BARCLAY EDMUNDSON  
WILLIAM D. TENKOP  
STEVEN L. GURDE •  
ROBERT S. KHALIL •  
H. GREGORY MORRIS •  
STEPHEN M. GURSTENBERG  
RICHARD S. KENDALL  
TERRY L. BAUCHEZ  
STEVEN H. PERRY  
RUTH E. FISHER  
ANNE H. CRENTON  
ELLEN R. APRILL  
JOSEPH D. LICE  
RICHARD W. BANE  
MARK S. KROLOFF  
MARK S. HELLM  
MICHAEL E. SOLOFF  
ANNIE T. LARSEN  
GREGORY D. PHILLIPS  
JOHN S. FRANK  
DALLY A. KINGSBERG  
MICHAEL R. DOTY  
ROSAN H. C. CUMMERS  
SUSAN E. NASH  
BARRY S. ROBERTS  
EUGENE S. ALLOYSKY  
FELICIA A. MARCUS

October 3, 1986

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
Washington, D.C. 20005

Dear Sirs:

This letter is written on behalf of our clients, Berkshire Hathaway, Inc. ("Berkshire") and Mr. Warren E. Buffett, to request a no-action letter from the staff under Section 13(d) of the Securities Exchange Act of 1934 (the "1934 Act") and Rule 13d-1 promulgated thereunder. We request that such no-action letter state that the Commission shall take no action in the event that Mr. Buffett reports beneficial ownership of securities, the ownership of which is attributable to him by virtue of his relationship with Berkshire, on Schedule 13G jointly with Berkshire in situations where Berkshire is eligible to use Schedule 13G, rather than separately on Schedule 13D.

Mr. Buffett is the Chairman of the Board, a director, and the beneficial owner of approximately 41.8% of the issued and outstanding common stock of Berkshire. In addition, Mr. Buffett's wife, Susan T. Buffett, owns 3.23% of Berkshire's common stock. Berkshire is the parent holding company of National Indemnity Company, National Fire and Marine Insurance Company, and several other domestic insurance companies ("Berkshire insurance subsidiaries"). All of the Berkshire insurance subsidiaries are insurance companies as defined in Section 3(a)(19) of the Securities Exchange Act. Through other subsidiaries Berkshire is engaged in a number of other businesses, including production and sale of candy (See's Candies, Inc.) production and retail merchandising of vacuum cleaners and encyclopedias (The Scott & Fetzer Company), the savings and loan business (Wesco Financial Corporation, Inc., an 80.1% owned subsidiary), newspaper publishing (Buffalo Evening News, Inc.), and the retail furniture business (Nebraska Furniture Mart, Inc.).

The Berkshire insurance subsidiaries, either separately or as a group, as part of the ordinary operation of their investment portfolios, from time to time acquire securities representing more than 5% of a class of equity securities. Where they acquire these securities with neither the purpose nor effect of changing or influencing the control of the

Office of Chief Counsel  
October 3, 1986  
Page 2

issuer, and not in connection with nor as a participant in any transaction having such purpose or effect, they are eligible pursuant to Rule 13d-1(b)(1) to file using Schedule 13G, subject to the timing and other requirements of Rule 13d-1(b). Where Berkshire and its non-insurance subsidiaries do not own shares that in the aggregate exceed 1% of the subject class, Berkshire also is eligible to file using Schedule 13G, and this filing requirement might be satisfied by Berkshire filing a Schedule 13G as part of a group with the insurance subsidiaries.

We understand that, given Mr. Buffett's relationship with Berkshire, he would likely be considered to be an indirect beneficial owner, for purposes of Section 13(d), of all securities owned by Berkshire and its subsidiaries. The staff has, in three previous cases, taken no-action positions permitting individuals in positions similar to Mr. Buffett's to report their beneficial ownership (including direct, personal beneficial ownership) on Schedule 13G jointly with a company they controlled, where the controlled company was eligible to use Schedule 13G. See James Oberweis (available January 20, 1984); Stanford Z. Rothschild (available September 10, 1979); Fayez Sarofim (available July 7, 1979). Copies of these letters are attached.

We agree with the staff position as stated in the above letters that in adopting Rule 13d-1(b)(1) "it was not the intention of the Commission to extend a short form filing privilege to the private investment portfolios of individuals who are also beneficial owners of securities held by institutional investors eligible to file on Schedule 13G." For this reason, Mr. Buffett will not use Schedule 13G in any situation in which he has direct beneficial ownership (i.e., ownership other than through Berkshire and its subsidiaries) of any securities. In such situations, if his beneficial ownership, aggregating his direct ownership and his indirect ownership through Berkshire and its subsidiaries, exceeds 5%, Mr. Buffett will report his ownership on Schedule 13D and in accordance with the requirements applicable to a filing on Schedule 13D. Mr. Buffett does propose, however, to file a joint Schedule 13G with Berkshire or with Berkshire and its insurance subsidiaries, using a separate cover page, where his only ownership is indirect, through Berkshire and its insurance subsidiaries, and where Berkshire and its insurance subsidiaries are otherwise eligible to use Schedule 13G in accordance with the standards expressed in Rule 13d-1(b)(1). The no-action position that we are requesting on behalf of Mr. Buffett and Berkshire is thus significantly narrower than the position the staff took in the three letters cited above, since Mr. Buffett is not proposing to use Schedule 13G in any circumstances to report direct ownership by him, but only to report indirect ownership through Berkshire and its insurance subsidiaries.

We believe the Commission is justified in taking the no-action position we request not only for the reason given in the three above-cited letters (efficiency of compliance with the filing obligation under Section 13(d)), but also for additional reasons that we believe exist where, as here, the Schedule 13G would be used by an individual only to report indirect beneficial ownership. We believe that the Commission, in providing the Schedule 13G filing procedure for certain types of institutional investors, did not intend this mechanism to be rendered ineffective as a practical matter for any institutional investor

Office of Chief Counsel  
October 3, 1986  
Page 3

that is controlled by an individual. If an institutional investor's ordinary portfolio operations have to be reported pursuant to the time schedule and in the detail required for Schedule 13D because it may be deemed to be controlled by an individual, it would be placed at a competitive disadvantage relative to other similar institutions that do not have a controlling shareholder. The existence of a controlling individual shareholder who has no personal holdings of securities of a particular issuer should be of no relevance to the question of whether the objectives of an efficient disclosure system are best served by permitting specified types of institutional investors to report securities positions on Schedule 13G and otherwise in accordance with Rule 13d-1(b), where the transaction is in the ordinary course of business for the institutional investor and does not relate to changing or influencing control of the issuer.

Support for this position is provided by the Commission's discussion of the reasons it abandoned the original proposal that would have required a parent holding company to include "Schedule 13D-type information" in its Schedule 13G relative to any securities held by a "non-qualifying subsidiary." The Commission stated "it has been pointed out the scope of General Instruction C and the items of Schedule 13D would elicit disclosure concerning such a broad category of persons, holdings and transactions as to effectively undermine the intent of the de minimus provision. In view of the remaining conditions to the availability of Schedule 13G, including the requirements that the acquisitions be in the ordinary course of business and not for the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, the Commission believes it is appropriate to delete the requirement concerning the inclusion of Schedule 13D-type information." Securities Exchange Act of 1934, Release No. 14910, June 30, 1978. For the same reasons, we believe no purpose would be served by requiring Schedule 13D information from Mr. Buffett when his only ownership is indirect, through Berkshire, and Berkshire is entitled to file on schedule 13G.

For the reasons set forth above, we believe that in the limited situation described herein, where Berkshire is eligible to utilize Schedule 13G, Mr. Buffett should be able to satisfy any filing obligation he has under Section 13(d) through filing a joint Schedule 13G with Berkshire, in accordance with the procedures of Rule 13d-1(b), and with a separate Schedule 13G cover sheet for Mr. Buffett. We therefore request that the staff of the Commission agree that no action would be taken if, in these limited circumstances, Mr. Buffett reports the indirect beneficial ownership that he may be deemed to have of securities owned by Berkshire and its insurance subsidiaries on a Schedule 13G filed jointly with Berkshire and otherwise in accordance with the procedures of Rule 13d-1(b).

If the Commission or the staff has questions or desires any additional information, please do not hesitate to call the undersigned or William L. Cathey of this office. We appreciate your consideration of this matter and look forward to hearing from you at your earliest opportunity.

Office of Chief Counsel  
October 3, 1986  
Page 4

In accordance with Securities Act Release No. 33-6269 we have enclosed seven copies of this letter. We have, by separate cover, sent three additional copies to Mr. Joseph G. Connolly, Jr., Chief, Office of Tender Offers.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Denham". The signature is written in dark ink and is positioned to the right of the typed name.

Robert E. Denham

RED/ldd  
Enclosures  
cc: Joseph G. Connolly, Jr.