UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

IVISION OF
IN. .MENT MANAGEMENT

ACT SA
SECTION 5(b); 10(a); 2(10)
RULE
PUBLIC AVAILABILITY 10/23/96

October 23, 1996

VIA FACSIMILE
Mark Adams
Regulatory Policy Branch
Office of the Chairman
Australian Securities Commission
GPO Box 4866
Sydney NSW 2001
AUSTRALIA

Dear Mr. Adams:

This letter responds to your letter of September 24, 1996. In your letter, you ask whether a fund must send a current prospectus to an existing shareholder if the shareholder makes additional purchases.

The Securities Act of 1933 requires issuers, including mutual funds, to deliver a "statutory" prospectus to each investor prior to or with confirmation of a sale.[1] This obligation applies with respect to purchases made by both new investors and existing shareholders.

Many funds satisfy their prospectus delivery obligation with respect to purchases made by new investors by including a statutory prospectus with the confirmation of the sale. With respect to subsequent purchases made by shareholders, however, many mutual funds do not deliver a statutory prospectus with the confirmation. Rather, they satisfy their prospectus delivery obligation by delivering to each shareholder an updated statutory prospectus on an annual basis.[2] This satisfies the prospectus delivery requirement because the Securities Act

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[1] Section 5(b)(2). A "statutory prospectus" is a prospectus meeting the requirements of Section 10(a) of the Securities Act.

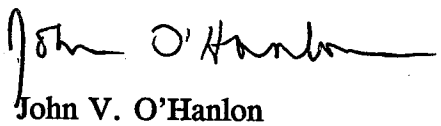
[2] The Securities Act requires a fund that is making a continuous offering of its securities to maintain a "current" statutory prospectus. Specifically, Section 10(a)(3) of the Securities Act requires that any prospectus used more than 9 months after the registration statement's effective date must contain financial and other information as of a date not more than 16 months prior to

permits a fund to deliver the statutory prospectus *before* the confirmation. As long as the statutory prospectus that the fund delivered to the shareholder is current when the shareholder makes additional purchases, the Securities Act does not require the fund to deliver another statutory prospectus with the purchase.[3] If the prospectus that was previously delivered to the shareholder is not current at the time of the purchase, the fund must deliver to the shareholder a copy of the latest prospectus before or at the time of the additional purchase.

The annual delivery of an updated statutory prospectus also permits a fund to send to shareholders other communications during the year that might otherwise be prohibited. Sales literature generally meets the definition of the term "prospectus" in the Securities Act, and so must comply with Securities Act requirements relating to prospectuses.[4] Sales literature sent with or after the delivery of a statutory prospectus, or "supplemental sales literature," however, is excluded from the definition of prospectus.[5] As a result, supplemental sales literature may include any information that is not misleading -- it generally is not subject to specific requirements as to content. Many funds rely on the exclusion for supplemental sales literature to provide to investors a form, attached to periodic account statements, that may be used to purchase additional shares.

I hope that this answers your question. Please contact me at (202) 942-0660 [Fax: (202) 942-9659] if you wish to discuss this matter further or if you require additional information.

Sincerely,



John V. O'Hanlon
Assistant Chief Counsel

attachment

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such use. A fund making a continuous offering of its securities can update its prospectus by filing a post-effective amendment to its registration statement that contains updated financial statements and other information.

[3] See Letter to Registrants from Carolyn Lewis (Jan. 3, 1991) (attached).

[4] Section 2(10) of the Securities Act generally defines the term "prospectus" to include any notice, circular, advertisement, letter, or communication, written or by radio or television, that offers any security for sale or confirms the sale of any security.

[5] See Section 2(10)(a) of the Securities Act.

AUSTRALIAN SECURITIES COMMISSION FACSIMILE

TO: Mr John O'Hanlon
Assistant Chief Counsel
Division of Investment Management
Securities Exchange Commission

FROM: Mark Adams
Senior Legal Officer
Regulatory Policy Branch
Office of the Chairman

FAX: 0015 1 202 942 9659
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PAGES: 3

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File Ref:

Dear Mr O'Hanlon,

Mutual fund disclosure - Subsequent investments

I have spoken to a colleague of mine, Dianne Weinstein, who has suggested that I contact you as you might be able to help me.

Would you please arrange for this facsimile to be given to someone appropriate in your office so that they could provide me with a short reply to the question below. Any assistance that you and your colleagues could provide would be greatly appreciated.

The Branch is involved in a number of projects related to appropriate offer document disclosure in relation to mutual funds (ie: in Australia, collective investment schemes). One of these projects involves consideration of appropriate disclosure for subsequent investments by existing investors of a mutual fund (ie: the information requirements for investors who have already invested in a mutual fund and who want to make a subsequent additional investment in that mutual fund or another mutual fund provided offered by the same investment company).

Generally, without relief provided by administrative action by the ASC, the Corporations Law of Australia requires both initial and existing investors in collective investment schemes to apply for an interest (ie: initial or further interest) in the scheme by completing an application form attached to a copy of the current registered prospectus. The rationale is that the investor should receive all material information before each investment decision.

The information in this facsimile is confidential, intended only for use of the individual or entity named above, and may be privileged. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this facsimile in error, please telephone me immediately and return the original facsimile to me at GPO Box 4866, Sydney NSW 2000.

Presently, the ASC is considering granting conditional relief from this requirement on the basis that management companies of collective investment schemes provide current information to existing investors by other equally effective means.

On our review of requirements in the United States, we are still not sure how the provisions of the *Securities Act 1933*, *Securities Exchange Act 1934* and *Investment Company Act 1940* and any relevant rules of the SEC operate in relation to offer document disclosure for subsequent investments by existing investors in a mutual fund.

In essence, is it the combined effect of these provisions that an existing investor in a mutual fund must receive, whether it be from an adviser or the relevant investment company, a copy of the current registered prospectus in relation to the mutual fund at least before or at the time of confirmation of the subsequent investment.

Or is it the case, that an existing investor is able to make subsequent investments in a mutual fund without having to receive a copy of the relevant current registered prospectus. If this is the case, is this because, the investor receives relatively detailed annual information from the investment company regarding the mutual fund under the US securities legislation and SEC rules.

For you information most investors in collective investment schemes in Australia apply for interests in a collective investment scheme either via an investment adviser or directly. In either case, that investment is made by completion and delivery of an application form attached to a copy of the current registered prospectus.

Would you please arrange for someone appropriate to reply to this question as soon as possible. A brief reply is more than sufficient.

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If the reply could be sent to:

Mark Adams
Regulatory Policy Branch
Office of the Chairman
Australian Securities Commission
GPO Box 4866
Sydney NSW 2001
Australia.

Facsimile number is as above.

Any information that you or any of your colleagues could provide on this issue would be greatly appreciated.

I am making a similar request the Investment Management Regulatory Organisation, United Kingdom.

Your sincerely,

Mark Adams
Regulatory Policy Branch

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