

**MEMO# 1966**

June 13, 1990

# **SEC STAFF STATES THAT SENDING SALES LITERATURE TO SUBSCRIBERS OF PERIODICALS CONTAINING PROSPECTUSES MAY VIOLATE SECURITIES ACT**

June 13, 1990 TO: SEC RULES MEMBERS NO. 42-90 UNIT INVESTMENT TRUST MEMBERS NO. 36-90 DIRECT MARKETING COMMITTEE NO. 14-90 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 13-90 SALES FORCE MARKETING COMMITTEE NO. 14-90 ADVERTISING COMMITTEE RE: SEC STAFF STATES THAT SENDING SALES LITERATURE TO SUBSCRIBERS OF PERIODICALS CONTAINING PROSPECTUSES MAY VIOLATE SECURITIES ACT

In response to an inquiry by the Wisconsin Office of the Commissioner of Securities, Kathryn B. McGrath, the Director of the Division of Investment Management, addressed the practice of certain mutual funds of printing statutory prospectuses in magazines or newspapers of general circulation. The prospectuses had been "wrapped" with supplemental sales literature, including purchase applications. In addition, funds subsequently had sent supplemental sales literature to regular subscribers of the periodical in which the prospectus appeared. Ms. McGrath's letter stated that the staff has no objection to a fund including a prospectus, accompanied by a purchase application, as an insert to a magazine or newspaper, provided that its significance is not obscured by the accompanying sales literature materials. However, the staff expressed the view that it is not permissible to subsequently circulate sales literature to subscribers (either as a separate mailing or as an insert in a later issue), since it believes that the requirement for prior prospectus delivery would not be satisfied by sending the sales literature only to subscribers of the periodical in which the full prospectus appeared. Instead, the prospectus must have been sent as "a separate and independent document". A copy of the letter is attached. Craig S. Tyle Associate General Counsel Attachment