The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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NO-ACTION LETTER CLARIFIES STAFF POSITION ON FILING APPLICATION UNDER SECTION 8(F) IN FUND MERGERS

August 11, 1989 TO: SEC RULES MEMBERS NO. 42-89 RE: NO-ACTION LETTER CLARIFIES STAFF POSITION ON FILING APPLICATIONS UNDER SECTION 8(F) IN FUND MERGERS _____ In a recent no-action letter concerning the reorganization of two registered investment companies organized as common law trusts into a single Massachusetts business trust, the staff of the Division of Investment Management stated that where a merger or reorganization of two or more registered investment companies results in a single successor registered investment company, all but one of the predecessor companies are required to file an application under Section 8(f) of the Investment Company Act upon completion of the reorganization. (Commonwealth Funds, pub. avail. June 14, 1989.) This supersedes a prior no-action position taken by the staff in United Gold Shares, Inc. (pub. avail. Sept. 17, 1984). The staff also stated that the successor fund could advertise performance information of one of the predecessor funds for the period preceding the reorganization, where both funds had substantially identical investment policies and performance and the other predecessor fund had substantially lower expenses due to its structure as a vehicle for periodic payment plans. (Both the predecessor fund for which prior performance data would be allowed and the successor fund were conventional mutual funds with similar fee structures.) The fact that some performance data was based on a predecessor fund would be required to be prominently disclosed. The staff also allowed the board of directors of the funds' sponsor-underwriter to make the determinations required by Rule 17a-8 under the Investment Company Act, since neither of the predecessor funds had a board of directors, based upon certain representations. A copy of the no-action letter is attached. Craig S. Tyle Assistant General Counsel Attachment