The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

COMMENT LETTER

July 20, 2001

Letter Concerning Singapore Disclosure Requirements, July 2001

July 20, 2001

Mr. Hong Tat Chee
Ministry of Finance
100 High Street
#06-03, The Treasury
Singapore 179434

Dear Mr. Chee:

The Investment Company Institute is writing with regard to the current requirements under Singapore law for reporting ownership of securities of Singaporean issuers. The Institute is the national association of the US investment company industry. Our membership includes 8,598 open-end investment companies ("mutual funds"), 504 closed-end investment companies, and 7 sponsors of unit investment trusts. Our mutual fund members have assets in excess of $6.9 trillion, accounting for approximately 95% of total US industry assets, and over 83.5 million individual shareholders. We represent our members and their shareholders in matters of legislation, regulation, taxation, public information, economic and policy research, business operations, and statistics.

One of the most significant features of the mutual fund business today is its global focus. In the US, more than 1,100 funds (with over $563 billion in assets) have a global or international focus, and many of these global and international funds invest in Singapore. According to an informal Institute survey, over 80% of fund complexes offering international funds held Singaporean securities in at least one of those funds. Many of our members also manage assets for pension plans or other non-mutual fund clients that also increasingly are investing on a global basis. As a result, our members have a significant interest in the requirements for investing in Singapore.

Mutual funds and other institutional investors typically do not invest for the purpose of obtaining control of a company. Rather, they invest for their clients in a portfolio of securities designed to obtain an agreed upon investment objective. Moreover, our research demonstrates that in investing outside the United States, US mutual funds also have provided a stable source of capital to emerging markets.[1]

Requirements Under Singapore Law

As you know, the Singapore Companies Act requires an investor holding voting shares of a company listed on the Singapore Exchange Securities Trading Limited to disclose its holdings to that issuing company upon the investor attaining five percent or more interest of the voting shares. In addition, after reaching this initial threshold percentage level, the investor must make supplemental disclosures for each change in ownership within two days of the change. Moreover, for purposes of reporting, a parent company must aggregate the holdings of its subsidiaries in determining its interest in a security.

The Institute and its members recognize the importance of requirements to report significant holdings. Nonetheless, we submit that the benefits of those reports need to be considered regularly in the context of the burdens they place on investors subject to the reporting requirements. There are a number of features of Singapore's requirements that create significant administrative burdens for institutional investors such as our members. In our view, the policy objectives of Singapore's reporting rules can still be achieved if the rules were revised to remove these burdensome features with respect to institutional investors. In fact, we believe that the requirement to report minute changes within two calendar days on an aggregated basis provides no useful information to the issuers or to the market while imposing significant burdens on investors.

Incremental Disclosures

Singapore requires investors to report every change in their holdings. Therefore, investors are required to make additional disclosure of ownership of Singapore companies after reaching the five percent threshold for every change in ownership, regardless of whether the change is de minimis.

In most other countries, investors are required to make additional disclosures after reaching an initial threshold only upon crossing subsequent thresholds or when holdings increase or decrease by a certain percentage.[2] For example, in certain countries, including France, Greece, and Switzerland, disclosures are required upon reaching or dropping below certain threshold levels, such as five percent, 10 percent, 20 percent, 33 1/3 percent, 50 percent, and 66 2/3 percent. Other countries, including Australia, Hong Kong, Japan, and Korea, require additional disclosures if there is an increase or decrease of one percent or more in holdings. In Belgium, Brazil, South Africa, and Thailand, additional disclosures are required if there is an increase or decrease of five percent or more in holdings. These approaches impose significantly fewer burdens on investors than the requirement to report every change in holding regardless of size.

In the US, under sections 13(d) and 13(g) of the Securities Exchange Act of 1934 ("Exchange Act") and the regulations thereunder, any person who acquires more than five percent of a class of voting securities generally must report the acquisition on Schedule 13D within 10 days. Thereafter, a person must make additional filings only for acquisitions or dispositions of beneficial ownership of one or more percent of the securities. De minimis changes do not trigger a reporting obligation.

Aggregation Requirement

The administrative burdens imposed on institutional investors, such as members of the Institute, are compounded by the requirement to aggregate the holdings of subsidiaries.

This aggregation policy increases the number of filings made by members that are affiliated with more than one fund manager. The obligation to aggregate the holdings of common control affiliates together with the requirement to report every change in ownership requires our members to monitor constantly the holdings of affiliated entities.

In the US, the federal securities laws contain exceptions that reduce unnecessary burdens on professional managers that are subject to securities ownership filing requirements. Regulation 13D-G under the Exchange Act (a copy of which is attached) provides that when related money managers independently exercise voting and investment powers, the positions of the individual managers need not be reported together for purposes of disclosure under Regulation 13D-G. In addition, qualified institutional investors and other passive investors may use streamlined procedures and a short form in making filings under Regulation 13D-G.

Two Calendar Day Requirement

As noted above, Singapore law requires investors to file ownership reports within two calendar days of reaching the initial five percent threshold or of any change in holdings. In most countries, investors have at least two business days to file their reports.[3] In the United States, qualified institutional investors and passive investors that do not acquire or hold securities to change or influence the control of an issuer must report 45 days after the end of the calendar year for changes to the form in which they reported ownership of more than five percent.

The burdens imposed on foreign institutional investors under Singapore's securities ownership reporting system are exacerbated by the requirement to make all filings within two calendar days of the transaction. Nevertheless, although we recommend that the rules be changed to allow institutional investors a reasonable time to file, merely extending the time for filing reports would not obviate the problems for institutional investors caused by requirements to file with respect to each subsequent transaction on an aggregated basis.

Benefits of Current Requirement and the Burdens Imposed

The Institute appreciates the important policies for requiring the disclosure notifications. We believe, however, that the benefits of these policies must be weighed against the burdens imposed on institutional investors subject to the reporting obligations. This balancing should take into account that portfolio investment by institutional investors represents passive investment.

These excessive burdens do not seem justified in the context of professional asset managers that do not invest on behalf of their clients for control purposes. The concern that a particular investor or a group of investors acting in concert would accumulate secretly a significant position in order to control an issuer is not relevant in the case of these types of asset managers.

We, therefore, respectfully request that US institutional investors be required to make additional disclosures (after reaching the initial threshold level for reporting) only upon reaching a subsequent threshold or upon holdings changing by at least one percent.[4] We also request that institutional investors be provided relief from the aggregation requirement similar to that provided by the SEC under Regulation 13D-G. Finally, we request that the

requirement to report ownership in listed companies within two calendar days be amended to provide global investors a reasonable opportunity to submit their reports. We believe that amending these requirements would permit issuers as well as the market to receive accurate information about securities owners and lessen the significant burden on institutional investors.

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We would be pleased to answer any questions or discuss any of these issues further. You may contact me at (202) 326-5810 or at jchoi@ici.org.

Very truly yours,

Jennifer S. Choi
Assistant Counsel

Enclosures

ENDNOTES

1 See Mitchell A. Post and Kimberlee Millar, U.S. Emerging Market Equity Funds and the 1997 Crisis in Asian Financial Markets, Perspective, Volume 4, Number 2, Investment Company Institute, June 1998; John Rea, "U.S. Emerging Market Funds: Hot Money or Stable Source of Investment Capital, Perspective, Volume 2, Number 6, Investment Company Institute, December 1996 (copies enclosed).

2 Our research indicates that only a handful of countries, including Chile, Indonesia, Malaysia, Pakistan, and Taiwan, require disclosures after reaching the initial threshold for any change in holdings. Even in most of those countries, reporting requirements are less onerous than in Singapore. For example, in Taiwan, initial reports are not required until a shareholder's holdings equal 10 or more percent of the shares and shareholders holding more than 10 percent are required to report any change in their shareholding on a monthly basis, rather than within two days of the transaction.

3 For example, Australia and Canada require investors to file reports within two business days; Hong Kong and Korea require investors to file within five days; Austria, Germany, Malaysia, and Sweden require disclosure within seven days; and Indonesia and Mexico require disclosure within ten business days.

4 We recognize that, in rare instances where an institutional investor does accumulate holdings for control purposes, it may be appropriate to require the investor to report its holdings more frequently.