

COMMENT LETTER

June 15, 1999

Comment Letter on U.S. Mutual Fund Sales in Australia, June 1999

By Facsimile and Email

June 15, 1999

Ian Domecillo
ASIC Managed Investments
GPO Box 9827
Sydney NSW 2001

Re: ASIC 99/017 Request for Comment on PS 65

Dear Mr. Domecillo:

We are writing in response to your request for comment on the Australian Securities & Investment Commission's recent statement with respect to the eligibility of US mutual funds for sale in Australia under ASIC Policy Statement 65: Foreign Collective Investment Schemes (PS 65).¹ PS 65 authorizes ASIC to permit the sale of foreign collective investment schemes that meet the standards set forth in the policy. The Investment Company Institute² appreciates ASIC's clarification that it intends to grant relief to US mutual fund applicants in accordance with PS 65. The Institute also supports ASIC's decision to conduct a general review of PS 65 to determine if any changes to the policy should be made in the future.

PS 65 sets out the principles which guide ASIC in the exercise of its discretionary powers in relation to the offer and sale of interests in foreign collective investment schemes.³ Conditional relief generally will be granted under PS 65 to foreign collective investment schemes that operate under a regulatory regime which provides a level of investor protection comparable to that found in Australia and that meet certain specified conditions.⁴ PS 65 enumerates certain classes of foreign collective investment schemes that are eligible for relief, including open-end investment companies (commonly called mutual funds in the US) and unit investment trusts registered under Section 8 of the Investment Company Act of 1940.⁵

The inclusion of registered US mutual funds and unit investment trusts within the class of funds eligible for relief under PS 65 continues to be appropriate. These funds meet the key regulatory requirements set forth in PS 65 as a result of the requirements imposed on them under the various US federal securities laws, including the Investment Company Act of

1940. For example, registered US funds are subject to strict requirements with respect to disclosure, safekeeping of fund assets, conflicts of interest, portfolio valuation and liquidity, and the redemption of fund shares. Moreover, granting conditional relief from the securities laws to US funds is appropriate in light of the proposed amendments to the Australian "foreign investment fund" or "FIF" rules that would remove a significant tax disincentive to Australian investment in US funds that are treated for US tax purposes as "regulated investment companies."⁶ For both of these reasons, we appreciate ASIC's clarification as to the eligibility of US mutual funds for relief under PS 65.

We note that there are several specific conditions for relief under PS 65 that should be revised or clarified to ensure that they will have no unintended tax or securities law effects on the fund or its adviser relating to the offer and sale of US fund shares in Australia. The Institute expects to submit an additional comment letter providing more detail on these issues by the end of the comment period on September 3, 1999.

We appreciate the opportunity to comment on this important policy statement. If you have any questions about our comments or need additional information, please contact me at (202) 326-5826 or Robert C. Grohowski at (202) 371-5430.

Sincerely,

Mary S. Podesta
Senior Counsel

ENDNOTES

1 IR99/017 – "ASIC to grant relief to facilitate USA 'Mutual Fund' offerings in Australia" (May, 1999).

2 The Investment Company Institute is the national association of the US investment company industry. Its membership includes 7,576 open-end investment companies ("mutual funds"), 479 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$5.860 trillion, accounting for approximately 95% of total industry assets, and have over 73 million individual shareholders.

3 PS 65.1.

4 PS 65.8-17 (comparability of foreign regulatory regimes) and 65.23-29 (pre-conditions for relief).

5 PS 65.47(c).

6 The FIF rules govern the taxation of foreign investment funds. The FIF rules create a significant disincentive for Australian investors to invest in offshore mutual funds because investors are generally taxed each year on the fund's realized income, as well as the unrealized gains in the securities held by the offshore fund, thereby accelerating the recognition of income to the investor. In contrast, if an Australian investor invests in an Australian mutual fund, the investor generally is not taxed on the unrealized gains in the securities held by the fund. The FIF rules were enacted to restrict the ability of Australian residents to defer the recognition of income by investing in offshore investment companies that do not distribute their realized income. US funds that qualify as regulated investment companies (RICs) under the US Internal Revenue Code do not offer these tax deferral

opportunities because they are required to annually distribute substantially all of their realized income. For this reason, the FIF rules have been proposed to be amended to create an exception for US RICs. We understand that the Australian Parliament currently is considering the proposed amendments.

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