

RESPONSE OF THE OFFICE OF
INVESTMENT COMPANY REGULATION
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 93-01-ICR
The PNC Fund, et al.
(File No. 812-8220)

In your letter dated March 31, 1993, you state that The PNC Fund, Inc. (the "Fund") received an order (the "PNC Order") 1/ exempting it from sections 18(f), 18(g), and 18(i) of the Investment Company Act of 1940 to permit the Fund to issue two classes of shares in each of its money market portfolios. In addition, Funds Distributor, Inc. ("Funds Distributor"), the Fund's distributor until January 17, 1993, received an order (the "Distributor's Order") 2/ exempting investment companies for which Funds Distributor acts as principal underwriter from sections 18(f), 18(g), and 18(i) to permit them to offer three classes of shares in each of their investment portfolios.

You state that the money market portfolios of the Fund that have commenced operations now have two classes of shares outstanding in reliance on the PNC Order. You state that the Fund's other portfolios that have commenced operations also have two classes of shares outstanding, although neither rule 12b-1 nor servicing expenses have been charged, paid, or accrued, and transfer agency expenses have been treated as a general expense of the particular portfolio.

You state that, in September, 1992, the Fund became aware of the proposed acquisition of Funds Distributor's indirect corporate parent, The Boston Company Advisors, Inc., by Mellon Bank Corporation. On November 30, 1992, the Fund's board of trustees held a meeting to consider the ramifications for the Fund of the proposed acquisition, and decided to replace Funds Distributor, effective January 17, 1993. On December 16, 1992, the Fund applied (the "Application") to amend the PNC Order to cover the three-class structure approved by the board of trustees under the Distributor's Order.

You request assurance that the Division of Investment Management will not recommend that the Commission take enforcement action if, pending final Commission action on the Application, the Fund issues three classes of shares in each of its investment portfolios in reliance on the Distributor's Order.

Based on the facts and representations contained in your letter, we would not recommend that the Commission take any enforcement action against the Fund if, pending final Commission action on the Application, the Fund relies on the Distributor's Order, subject to the terms and conditions set forth in it. Any

1/ The PNC Fund, Investment Company Act Release Nos. 17819 (Oct. 24, 1990) (notice) and 17875 (Nov. 27, 1990) (order).

2/ The Galaxy Fund, Investment Company Act Release Nos. 18507 (Jan. 30, 1992) (notice) and 18558 (Feb. 19, 1992) (order).

assurance provided here, however, is not a substitute for exemptive relief. Accordingly, this position shall be effective until the Commission takes final action on the Application, or until one year from the date of this letter, whichever is sooner.

The Division ordinarily would not provide no-action assurance in response to a request made after a change affecting the applicability of an order. We believe, however, that such a response is appropriate in this case. The Fund had already begun to implement the three-class structure permitted by the Distributor's Order before deciding to replace the distributor. The replacement of the distributor was made based on valid business reasons independent of any order issued by the Commission. Moreover, applicants filed the Application before replacing the distributor, and discussed the possibility of no-action relief with the staff before such change.

This response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions concerning the questions presented. Facts or conditions different from those presented in your letter might require a different conclusion. Furthermore, this letter provides no assurance that the Application will be approved by the Commission.

James J. Dwyer
Staff Attorney

April 2, 1993

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March 31, 1993

ACT ICA of 1940
SECTION 18(A)
RULE ---
PUBLIC AVAILABILITY 4/2/93

Jeremy N. Rubenstein, Esq.
Assistant Director
Office of Investment Company Regulation
Division of Investment Management, Stop 10-6
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The PNC® Fund

Dear Mr. Rubenstein:

On behalf of The PNC Fund (the "Fund"), we hereby request that the Staff of the Division of Investment Management (the "Staff") advise us that it will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action against the Fund under the Investment Company Act of 1940, as amended ("1940 Act"), if, under the circumstances described below, the Fund relies upon an existing exemptive order pending receipt by the Fund of a comparable order permitting the Fund to offer three classes of shares in each of its investment portfolios. We are submitting this request to you pursuant to our recent telephone conversations with Marilyn Mann, Esq., Special Counsel, Office of Investment Company Regulation, in which we discussed the desirability of submitting to you a no-action request in this context. We are submitting an original and eight copies of this letter in compliance with 17 CFR § 200.81.

As described further below, the Fund has filed an application with the Commission, which, if granted, would amend an existing order and permit the Fund to offer three classes of shares in each of its investment portfolios.

Background

The Fund, an open-end management investment company organized as a Massachusetts business trust, currently consists of twenty-one separate investment portfolios. The Fund has been granted an exemptive order for relief from Sections 18(f), 18(g) and 18(i) of the 1940 Act to permit it to issue two classes of

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shares in each of its money market portfolios (the "PNC Order").¹ Under the PNC Order, the two classes must be identical except for the allocation of expenses relating to Rule 12b-1 and shareholder servicing plans, voting rights related to those plans, transfer agency expenses, exchange privileges and class designations.

Funds Distributor, Inc. ("Funds Distributor"), the Fund's distributor until January 17, 1993, had been granted a similar exemptive order on February 19, 1992 (the "Distributor's Order").² That Order grants relief from Sections 18(f), 18(g) and 18(i) of the 1940 Act to permit investment companies for which Funds Distributor acts as principal underwriter to offer three classes of shares in each of its investment portfolios. Under the Distributor's Order, the three classes must be identical except for the allocation of expenses relating to Rule 12b-1 and shareholder servicing plans, voting rights related to those plans, transfer agency expenses, the net asset values of investment portfolios that do not declare dividends on a daily basis, exchange privileges, class designations and sales loads.³

On June 22, 1992, the Fund's Board approved a three-class structure for each of its investment portfolios based on the Distributor's Order, and on May 8, 1992 the Fund filed a Post-Effective Amendment to its Registration Statement on Form N-1A to register shares in the additional classes. That Amendment became effective on July 7, 1992.

On or about September 14, 1992, the Fund became aware of the proposed acquisition by Mellon Bank Corporation ("Mellon") of

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1. The PNC Fund, Investment Company Act Release No. 17875 (November 27, 1990).
 2. The Galaxy Fund, et al., Investment Company Act Release No. 18550 (February 19, 1992).
 3. On February 25, 1993, a Notice of Application for Exemption was issued under the 1940 Act relating to Funds Distributor's request for an additional exemptive order for relief from Sections 18(f), 18(g) and 18(i) of the 1940 Act to permit certain multi-class systems. Nations Fund Trust, et al. Investment Company Act Release No. 19297 (February 25, 1993). The Fund will not rely on any Order relating to that Notice, and therefore is not requesting no-action relief relating to any such Order.

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Funds Distributor's and the Fund's co-administrator's respective indirect and direct corporate parent, The Boston Company Advisors, Inc. (the "Mellon Transaction"). On November 30, 1992, the Fund's Board held a meeting to consider the ramifications for the Fund of the Mellon Transaction. The Board decided at that meeting to replace Fund's Distributor and its co-administrator effective January 17, 1993.

On December 16, 1992, the Fund filed an Application with the Commission to amend the PNC Order to broaden it to cover the above-described three-class structure approved by the Board on June 22, 1992, and thereby obviate the Fund's need to rely on the Distributor's Order. Prior to the termination of the Fund's contract with the Distributor, the Fund's counsel discussed with the Commission's Staff the possibility of filing a no-action request which might permit the Fund to use the three-class structure for the interim period from January 17, 1993 until the Amended Order has been granted.

The Fund's portfolios that have commenced operations have two classes of shares outstanding. However, neither Rule 12b-1 nor servicing expenses have been charged, paid or accrued, and transfer agency expenses have been treated as a general expense of the particular investment portfolio. Prior to becoming aware of the Mellon Transaction, the Fund was about to launch its multi-class structure with Rule 12b-1, servicing and possibly transfer agency expenses charged on a class specific basis. The Fund believes that its inability to rely on the Distributor's Order has, and will continue to, put it at a severe competitive disadvantage until it has received the Amended Order.

Analysis

The Fund proposes that pending receipt of the Amended Order the Fund would rely on the Distributor's Order and, subject to Staff positions, would be subject to that Order's terms and conditions. The Fund agrees that it would rely on the Amended Order when it is granted, rather than continuing to rely on the Distributor's Order pursuant to the no-action position requested hereby.

We believe that the Fund should be permitted to continue relying on the Distributor's Order, because the factors supporting the issuance of that Order are still applicable to the Fund even though the Fund replaced Funds Distributor.

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The Staff previously has taken "no-action" positions in similar situations involving various parties who sought to continue to rely on exemptive orders despite changes in circumstances similar to those involved here.⁴ In addition, most of these "no-action" positions were not limited to covering an interim period pending the receipt of a comparable order.

Conclusion

For the reasons stated above, and, subject to Staff positions, subject to the condition that the Fund will comply with the terms and conditions of the Distributor's Order pending receipt of the Amended Order, we respectfully request that the Staff advise that it will not recommend that the Commission take enforcement action if the Fund relies on the Distributor's Order pending receipt by the Fund of the Amended Order.

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4. See Cigna Funds Group (July 13, 1992) (investment companies with a new sponsor can rely on exemptive order relating to deferred compensation for non-interested trustees even though the order was granted to their previous sponsor for investment companies sponsored by such sponsor); Merrill Lynch Federal Securities Trust (Sept. 26, 1991) (investment company can rely on exemptive order permitting dual distribution system without seeking to amend order even though order did not originally apply to investment company); First Boston Corporation (July 3, 1991) (newly created funding corporation can rely on order exempting a substantially equivalent, but separate, funding corporation from registration without seeking separate order); Fiduciary Capital Partners, L.P. (Jan. 24, 1990) (partnerships can rely on existing order declaring independent general partners not to be "interested persons" without seeking amended or new order despite subsequent replacement of general partner); and Federated Investors, Inc. (Sept. 22, 1989) (reorganized entities can rely on order that only applied to predecessors).

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We would greatly appreciate your assistance in expediting this request. If you have any questions in connection with this request, please call me at (215) 988-2978, or in my absence, Elena J. Morrow-Spitzer at (215) 988-2583.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael P. Malloy". The signature is written in dark ink and is positioned above the typed name.

Michael P. Malloy