



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
INVESTMENT MANAGEMENT

March 23, 1994

Joseph R. Fleming, Esquire  
Dechert Price & Rhoads  
Ten Post Office Square - South  
Boston, Massachusetts 02109-4603

RE: Scudder Investment Trust; Our Ref. No. 93-24-CC

Dear Mr. Fleming:

Your letter dated January 14, 1993, requests our assurance that we would not recommend that the Commission take enforcement action under Section 30(b)(1) of the Investment Company Act (the "1940 Act") and Rule 30b1-1 thereunder if each of Scudder Investment Trust, Scudder International Fund, Inc., and Scudder Global Fund, Inc. (together, the "Funds"), 1/ files separate Forms N-SAR for series that have different fiscal year ends within the same Fund. 2/ Form N-SAR was designed, in part, to facilitate the Commission's ability to gather data regarding series companies, but did not anticipate that series within one series company might have different fiscal year ends. 3/ Assuming that applicable law permits a Fund to have series with different fiscal year ends, we would not object if the Funds file their Forms N-SAR as described below.

Certain items in the form do not require a separate response on behalf of each series if the response would be the same for some or all series. 4/ If the response to any such item is the

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- 1/ Each Fund is a registered open-end series investment company.
  - 2/ Both the 1940 Act and the rules thereunder are silent as to whether all series of a registered series investment company must have the same financial reporting period. You state that staggering the fiscal reporting periods of the series achieves cost savings by spreading the accounting and administrative workload over the entire calendar year.
  - 3/ See Investment Company Act Release No. 14080 (August 14, 1984) (release proposing Form N-SAR).
  - 4/ Form N-SAR allows a series company to indicate, at the top of each page, whether the responses on that page relate to all series or to one or more individual series. See Form

(continued...)

same for each series filing on a single Form N-SAR, then a Fund may furnish a single response. That response would apply only to those series filing on that Form N-SAR and not to series filing on a separate Form N-SAR. 5/

Items 20 through 23 (information relating to brokerage commissions and other portfolio transactions) and item 26 (information relating to considerations which affected the participation of broker or dealers or other entities in commissions) require aggregate information for all series. The Funds should continue to provide this information on an aggregate basis, updating the aggregate information for each period for which the form is filed. Other than this aggregate information, however, the responses on Form N-SAR should apply only to those series with the same fiscal year end.

Of course, should the Commission amend Form N-SAR, the Funds will be required to complete and file the amended form in accordance with all applicable provisions contained in the form, guides, or instructions.

Sincerely,

*Barbara Chretien-Dar*

Barbara Chretien-Dar  
Attorney

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4/(...continued)

N-SAR, General Instructions, paragraph D(8). For example, if the answers to Items 8 through 18 are identical for all series (relating to the identity of the investment adviser, administrator, principal underwriter, shareholder servicing agent, independent public accountant, affiliated broker/dealer, and custodian), only a single response on behalf of all series is required.

5/ If the Funds are filing Form N-SAR electronically using Commission-provided software, you should contact Commission staff in the Office of Financial Analysis at (202)272-3784 for special instructions on how to respond to such items.

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January 14, 1993

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Thomas S. Harman, Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
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Washington, D.C. 20549

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Section	-
File	3061-1
Public	
Availability	3-23-94

Re: Scudder Investment Trust, Scudder International Fund, Inc. and Scudder Global Fund, Inc.

Dear Mr. Harman:

I am writing on behalf of Scudder Investment Trust ("SIT"), Scudder International Fund, Inc. ("SIF") and Scudder Global Fund, Inc. ("SGF"), each of which is an open-end management investment company of the series type advised by Scudder, Stevens & Clark, Inc. (the series of such investment companies are referred to herein collectively as the "Funds" and individually as a "Fund"). The Funds are registered under the Investment Company Act of 1940, as amended, (the "1940 Act") and their shares are registered under the Securities Act of 1933. The purpose of the letter is to request that the staff of the Division of Investment Management (the "Division") of the Securities and Exchange Commission ("Commission") advise us that it would not recommend that the Commission take any enforcement action under the 1940 Act if SIT, SIF and SGF each continues to file with the Commission separate Form N-SAR reports for Funds that have different fiscal years within the same series investment company.

**I. BACKGROUND**

SIT is a Massachusetts business trust and currently has two series, Scudder Growth and Income Fund and Scudder Quality Growth Fund with fiscal year ends of December 31 and October 31, respectively. SIF is a Maryland corporation and currently has three Funds, Scudder International Fund, Scudder Latin America Fund and Scudder Pacific Opportunities Fund, one of which Funds has a fiscal year end different from that of the other two Funds. Scudder International Fund has a fiscal year end of March 31 and

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the two other SIF Funds have a fiscal year end of October 31. SGF is a Maryland corporation and currently has four Funds, Scudder Global Fund, Scudder International Bond Fund, Scudder Global Small Company Fund and Scudder Short Term Global Income Fund, two of which Funds have a fiscal year end different from that of the other two Funds. Scudder Global Fund and Scudder International Bond Fund have a fiscal year end of June 30 and Scudder Global Small Company Fund and Scudder Short Term Global Income Fund have a fiscal year end of October 31. Each Fund's taxable year currently ends on the same date as its fiscal year.

As permitted by the relevant organizational documents, the Board of Trustees of SIT designated the financial and tax reporting periods for each of its Funds at the time such Funds were initially established, and the Boards of Directors of SIF and SGF designated such periods for each of their respective Funds at the time such Funds were initially established. Each Fund, as a registered management investment company, uses Form N-SAR to meet its periodic reporting obligations with the Commission under Section 30(b) of the 1940 Act and Rule 30b1-1 thereunder.

Because SGF, SIF and SIT have non-uniform reporting periods among their respective Funds, separate reports on Form N-SAR have been filed at different times by the Funds depending on when a Fund's fiscal period ends. For example, Scudder Growth and Income Fund's fiscal year ends on December 31 and, therefore, its Form N-SAR filings generally have occurred in February and August of each year. On the other hand, Scudder Quality Growth Fund, the other series of SIT, has generally filed its Form N-SAR in December and June, because this Fund has an October 31 year end.

During the course of the Commission's review of an N-SAR filing for certain of the Funds, the Division staff requested Robert Guerin of Scudder, Stevens & Clark, Inc. to cause to be changed, within a reasonable period of time, the fiscal year of certain Funds so that each series investment company in the Scudder Group of Funds will have a uniform reporting period for all series in that series investment company. Following further discussion with Division staff, the Funds agreed to submit this request for no-action relief.

## **II. REQUEST FOR STAFF "NO-ACTION" POSITION**

On behalf of the Funds and Scudder, Stevens & Clark, Inc., we hereby request that the Division staff advise us that it would not recommend that the Commission take enforcement action under the 1940 Act if SIT, SIF and SGF each continues to file with the Commission separate Form N-SAR reports for Funds that have

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different fiscal years within the same series investment company.<sup>1</sup>

### III. DISCUSSION AND LEGAL ANALYSIS

A series investment company may be viewed, for purposes of Section 3(a) of the 1940 Act, as multiple investment companies under the umbrella of a single corporate or trust entity.<sup>2</sup> Section 30(b)(1) of the 1940 Act requires every registered investment company to file with the Commission "such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information contained in the registration statement of such company . . ." Form N-SAR, adopted by the Commission pursuant to its authority under Section 30(b)(1), is a semi-annual reporting form that every management investment company registered under the 1940 Act must file with the

1. The no-action relief referred to above is also hereby requested for any existing or future series investment company for which Scudder, Stevens & Clark, Inc., (or an affiliate thereof) acts as investment adviser and which establishes Funds that have different fiscal years. SIT, SIF and SGF are the only series investment companies in the Scudder Group of Funds (including the investment companies included in the AARP Investment Program from Scudder) that currently have series with split fiscal year ends.
2. Section 3(a) of the 1940 Act defines an investment company as any "issuer" that, among other things, is "in the business of investing, reinvesting or trading in securities". Section 2(a)(22) defines an "issuer" in terms of a "person", Section 2(a)(28) defines a "person" to include a "company", and Section 2(a)(8) defines a "company" to include a "trust, a fund, or any organized group of persons whether incorporated or not." In Prudential Ins. Co. v. Securities and Exchange Commission, 326 F.2d 383, 387 (3d Cir. 1963), cert. denied, 377 U.S. 953 (1964), the Court of Appeals for the Third Circuit rejected Prudential's argument that the statutory phrase "a trust, a fund, or any organized group of persons whether incorporated or not; . . ." refers only to recognizable business entities. But see Batra v. Investors Research Corporation, U.S. District Court Western District of Missouri, No. 89-0528-CV-W-6 (Oct. 4, 1991), in which the court disagreed with defendants' argument that each series of a series investment company constitutes an investment company under the 1940 Act.

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Commission, within 60 calendar days after the close of each fiscal year and fiscal second quarter.<sup>3</sup>

Series investment companies have customarily registered all of their series under the 1940 Act using a single registration statement, although registration of individual series of a series investment company using separate Form N-1A registration statements is not prohibited by statute, rule, Form N-1A or published staff guidelines. Neither the 1940 Act nor state law requires the series of a series management investment company to have a uniform financial reporting period.<sup>4</sup> Rule 30b1-1 only requires that a Form N-SAR be filed for every registered management investment company within 60 calendar days after the close of each fiscal year and fiscal second quarter.<sup>5</sup> Under the rule, therefore, the point of reference for determining the date by which a Fund must file its Form N-SAR with the Commission is the fiscal year end of that Fund.

In the release adopting Form N-SAR, the Commission specifically considered whether Form N-SAR, as proposed, should be revised to allow a unit investment trust ("UIT") to designate the reporting period for its series, because a UIT could have series with different fiscal years.<sup>6</sup> In determining to reject this approach, the Commission provided the following rationale:

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3. See Rule 30b1-1 under the 1940 Act.
  4. In addition, each series of a regulated investment company is treated as a separate corporation for federal income tax purposes. See Section 851(h) of the Internal Revenue Code of 1986, as amended (the "Code"). A board of directors of a series investment company can designate different taxable year ends for individual series of a series investment company because each series is treated as a separate taxpayer under the Code.
  5. As defined in Form N-SAR, the term "fiscal year" means the fiscal year of the registrant. A "registrant", for purposes of Form N-SAR, is the investment company filing the report or on whose behalf the report is filed. As stated above, each series of a series investment company may be viewed as an investment company for purposes of Section 3(a) of the 1940 Act. Consequently, the relevant fiscal year for an N-SAR filing is the fiscal year of the particular series on whose behalf the report is filed.
  6. Investment Company Act Release No. 14299 (Jan. 4, 1985), note 7.

. . . The Commission believes that a uniform reporting period should be designated for all UIT registrants to provide comparable information with respect to this type of registrant. Since UIT trustees usually calculate distributions and expenses as of the close of the calendar year, general instruction A has been revised to provide that all UITs are required to file the form for the twelve-month period ending December 31. (Emphasis supplied.)<sup>7</sup>

Only with respect to UITs, did the Commission require a uniform reporting period to be designated by an investment company with multiple series in connection with Form N-SAR. Separate treatment of UITs, requiring filings to be made on a calendar year basis, reflects the fact that UITs are different from registered management investment companies. A UIT, whether or not it has separate series, is not a separate taxable entity for federal income tax purposes. As noted above, each series of a management investment company is a separate taxpayer and must meet separately the requirements of Subchapter M of the Code in order to qualify as a regulated investment company ("RIC") for favorable tax treatment. Initial or continuing qualification as a RIC often drives the selection or change of a series' fiscal year.

There are currently 58 portfolios in the Scudder Group of Funds (including individual series) with aggregate net assets of over \$30 billion. The Scudder Group has intentionally staggered the fiscal reporting periods of these portfolios to spread the accounting and administrative workload over the entire calendar year. By staggering the portfolios' fiscal year ends, management avoids having to add staff at peak work periods, the additional cost of which would be borne in part by the portfolios and their shareholders in the form of higher fund auditing fees. In addition, to the extent that Scudder, Stevens & Clark, Inc. currently bears the cost of fund accounting and administrative personnel, any increase in time costs are likely to result in pressure for higher management fees.

If the Division staff were to deny this request for no-action relief, the Funds would be required to take one of two courses of action. Either each series of each Scudder series investment company would conform its fiscal year and taxable year to a uniform period for that Scudder series investment company,

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7. Id.

or, more likely, certain Funds would be reorganized into separately organized investment companies to maintain the staggered accounting cycle for fund financial and tax reporting purposes that is currently in place for the Scudder Group. Either option would be costly and burdensome for the Funds, as explained below.

If the Funds were to reorganize into separate investment companies, each such reorganization would require the approval of shareholders of the series affected by such reorganization transaction. The estimated average cost of holding a shareholder meeting for a Fund, including printing and mailing of proxy material, is approximately \$100,000, an expense which would be borne by that Fund and its shareholders. Furthermore, each reorganization would have to be structured so as to qualify as a nonrecognition transaction for federal income tax purposes.

Similarly, having the existing series conform their fiscal years to a uniform period also will create additional costs and burdens for the Funds, because it will result in the series conforming their taxable years as well.<sup>8</sup> In general, a taxpayer's taxable year must coincide with its fiscal year.<sup>9</sup> If, however, a taxpayer changes its annual accounting period, the new accounting period will become the taxpayer's taxable year only if the taxpayer obtains prior approval from the Commissioner of the Internal Revenue Service. Code Section 442. In the case of the Funds, it would not be feasible to maintain fiscal years which differ from the Funds' corresponding taxable years. Such a practice would create reconciliation, dividend reporting and compliance issues. Furthermore, and perhaps more importantly, where a Fund's fiscal and taxable years coincide, the audit

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8. Section 441 of the Code defines a "taxable year" as the basis on which a taxpayer must compute taxable income for Federal income tax purposes.

9. Section 441(b) requires a taxpayer's taxable year to coincide with the taxpayer's "annual accounting period", if that period is a calendar or fiscal year. For this purpose, taxpayer's "annual accounting period" is the annual period which the taxpayer regularly uses to compute income in keeping its books. Code Section 441(c). A "fiscal year" is an accounting period which ends on the last day of any month other than December; a "calendar year" is an annual accounting period which ends on December 31. Code Section 441(d), (e). Accordingly, a taxpayer which keeps its books on the basis of a fiscal year generally must use that period as its taxable year for Federal income tax purposes.

performed by the Fund's independent accountants in connection with the preparation of the Fund's annual report to shareholders helps to insure the integrity of the calculations used for Federal income tax reporting purposes. Accordingly, if required to change their fiscal years, the Funds would also seek to change their taxable years.

As mentioned above, a taxpayer generally must obtain prior approval from the Commissioner of the Internal Revenue Service to change its annual accounting period and adopt a new taxable year. Code Section 442; Treas. Reg. § 1.442-1(b)(1). To do so, the taxpayer must file an application on Form 1128 (Application to Adopt, Change or Retain a Tax Year) with the Commissioner by the 15th day of the second calendar month following the close of the resulting short taxable year. To secure such approval, taxpayers generally must identify a substantial business purpose for the change. Furthermore, approval will not be granted unless the taxpayer and the Commissioner agree to the terms, conditions and adjustments under which the change will be effected.

Certain corporations<sup>10</sup> may change their annual accounting period without prior approval if they satisfy certain filing requirements and meet certain other conditions. Treas. Reg. § 1.442-1(c). One of the conditions is that the corporation has not changed its annual accounting period during the ten-calendar-year period ending with the calendar year in which the resulting short period begins.

Corporations which cannot satisfy the conditions for a change of annual accounting period without prior approval may be eligible for an expedited approval procedure. Revenue Procedure 92-13, I.R.B. 1992-3 (Jan. 6, 1992). This expedited procedure is not available, however, if, among other things, the corporation has changed its annual accounting period during the six-calendar-year period ending with the calendar year in which the resulting short period begins.

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10. As used here, the term "corporation" includes both state law corporations and unincorporated entities (such as business trusts) that are classified as associations taxable as corporations for federal income tax purposes. To qualify for the favorable tax status accorded to RICs under the Code, an entity must be classified as a domestic corporation for federal income tax purposes. Each Fund qualifies as a RIC under the Code, and intends to continue to do so in the future.

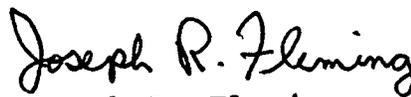
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The availability of automatic or expedited procedures for changing annual accounting periods is valuable to a RIC. For example, a RIC may seek to effect such a change if it foresees difficulty in satisfying the quarterly diversification tests imposed by subchapter M of the Code for a given quarter. By requiring a RIC to change its fiscal reporting period, the Commission would be denying the RIC the availability of an expedited or automatic procedure for the next six or ten years, as the case may be. Furthermore, in the case of a RIC which already has used one of these procedures within the last six or ten years, another change could be effected only with prior approval obtained from the Internal Revenue Service through the formal application procedure, rather than through the automatic or expedited procedure. The formal procedure necessarily is the most costly and time consuming of the three available procedures. Also, until the application is ultimately approved or denied, the RIC cannot be certain of its current accounting period. Such uncertainty is undesirable for any length of time, since the requirements imposed by subchapter M of the Code for qualification as a RIC are applied on the basis of the RIC's accounting period.

For the reasons stated above, we ask that the requested no-action relief be granted. If you need further information concerning this request, please contact the undersigned at (617) 728-7161 or Sheldon A. Jones at (617) 728-7123. If for any reason you do not concur in our conclusions, we respectfully request a conference with the Division staff prior to any adverse written response to this letter.

In accordance with Securities Act Release No. 6269, an original and seven copies of this request are enclosed.

Sincerely,

  
Joseph R. Fleming

SAJ/lml

cc: Lawrence A. Friend  
Chief Accountant,  
Division of Investment Management