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

DIVISION OF
INVESTMENT MANAGEMENT

January 7, 1993

Act ICA-40
Section 15(a)
Rule
Public
Availability 1/7/93

William M. Tartikoff, General Counsel
Beth-ann Roth, Associate General Counsel
The Calvert Group
4550 Montgomery Avenue
Bethesda, MD 20814

Re: Obligation of Management Investment Companies to Comply with Undertaking to Conduct Public Shareholder Meeting

Dear Mr. Tartikoff and Ms. Roth:

In a letter dated November 6, 1992, I advised Matthew P. Fink at the Investment Company Institute that the Division will no longer ask management investment companies to include in their registration statements an undertaking to hold a shareholders' meeting to elect a board of directors, to approve the fund's investment advisory contract and rule 12b-1 plan, if any, or to ratify the board of director's selection of the fund's independent public accountants. By letter dated December 17, 1992, you request that I reconsider the Division's position that a fund with an effective registration statement in which it undertakes to conduct a meeting of its shareholders to vote upon these matters remains obliged to act in accordance with that undertaking.

The Division reiterates that it cannot relieve funds, either individually or generally, of any obligation to their shareholders to conduct a shareholder meeting that may exist by virtue of the undertaking. Upon further consideration, however, the Division believes that it cannot determine the materiality of these undertakings and the extent to which shareholders may have relied upon them. Rather, individual funds should make these determinations based upon their particular circumstances. Furthermore, a fund may attempt to limit its liability to future shareholders if it does not hold a meeting by filing a post-effective amendment deleting the undertaking. In the Division's view, however, such an amendment would have no effect upon the rights of existing shareholders.

The Division is not unmindful of the costs associated with shareholder meetings. These costs, in fact, prompted the Division to revisit the shareholder voting requirements. Rather than causing funds "to bear the burden and expense of holding an initial shareholder meeting," as you suggest, the Division acted to *relieve* funds of the expense of conducting shareholder meetings as far as consistent with the rights of shareholders. Thus, in determining to cease requiring the undertaking, the Division was willing to presume that, absent the undertaking, investors who purchase shares will "vote with their dollars" to accept the fund's existing advisory and other arrangements. This is far different, however, from determining that investors who purchased shares of a fund that has undertaken to conduct a shareholder meeting did not think the undertaking significant and did not rely upon it.

Whether the undertaking is material and whether public investors relied upon it are questions of fact to be resolved on a case-by-case basis. The staff has permitted funds with effective registration statements to withdraw their undertakings by filing a post-effective amendment if they have not sold shares to the public. Where a fund has sold its shares to the public pursuant to a registration statement that contained (albeit in Part C) an undertaking to conduct a shareholder meeting, however, we cannot know the extent to which investors purchasing those shares may have considered significant the opportunity to vote upon the fund's directors, rule 12b-1 plan and advisory arrangements.

For this reason, the Division announced that it would not consider no-action requests for relief from this obligation. Nor did the Division believe it appropriate, as you suggest, to announce generally that funds are no longer obligated to comply with the undertaking, essentially absolving funds of their obligation by administrative fiat. Nevertheless, upon further reflection, the Division now recognizes that there may be circumstances that would enable a particular fund to determine, upon advice of counsel, that its undertaking is not material or that its shareholders did not rely upon it and, on that basis, forego conducting the meeting.

Sincerely,

Marianne K. Smythe
Director

4550 Montgomery Avenue
Bethesda, Maryland 20814
(301) 951-4800

December 17, 1992

HAND DELIVERED

Marianne K. Smythe
Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Division statement that funds with effective registration statements must hold initial meeting of shareholders notwithstanding finding that such meetings are not required

PETITION FOR RECONSIDERATION

Dear Ms. Smythe:

The undersigned mutual fund groups[1] respectfully request that you reconsider a portion of your November 6, 1992 letter to Matthew P. Fink, President of the Investment Company Institute. Your letter stated that the Division will no longer require funds to undertake to hold an initial shareholder meeting -- to elect a board of directors, approve the investment advisory contract and Rule 12b-1 plan, and ratify the selection of independent accountants -- in order for the Commission to declare effective the fund's registration statement.

We agree with the Division's determination that funds need not undertake to hold an initial shareholder meeting, and appreciate the staff's prompt decision on this matter. We share your view that shareholders effectively vote to accept existing arrangements by investing in the fund. However, we take issue with the decision that funds with effective registration statements must comply with their undertaking to hold an initial meeting in light of the Division's recognition that such meetings are not required by law.

As stated in your letter to Mr. Fink, the Division previously interpreted sections 15(a) and 16 and Rule 12b-1 to require a vote by the public shareholders. The result of this interpretation was that the Division would not declare a registration statement effective without

[1] The mutual fund groups joining in this petition represent over $300 billion of the industry's assets under management.

an undertaking by the fund that it would hold an initial meeting of shareholders within sixteen months of its effective date. The Division has now reversed its position, so that undertakings to hold an initial shareholder meeting are no longer required.

We believe it is inappropriate for funds and their affiliated companies to bear the burden and expense of holding an initial shareholder meeting because of an undertaking previously required by the Division, without which the Division would not declare the funds effective, and which the Division has now publicly stated is not required by law. This position appears contrary to the substance of your revised interpretation of the applicable law.

It is not satisfactory to argue that funds are bound to hold initial meetings because they undertook to do so under compulsion by the Division. This elevates form over substance. Your letter to Mr. Fink acknowledged that shareholders do not rely on such undertakings since they "have voted with their dollars to accept the fund's existing" contracts. And if there has been no reliance on the undertakings, then there can be no rationale for demanding adherence to their meaningless requirement. By your own analysis, the undertaking to hold a shareholder meeting would not likely have been material to an investor's decision to purchase shares of the fund.

This action arguably amounts to substantive rulemaking not conforming to the notice and comment requirements of the Administrative Procedures Act. Moreover, any such rule would, for the reasons discussed above, be arbitrary and capricious and not in accordance with law.

It is costly to hold meetings, and it is a waste of resources to hold meetings that serve no purpose. The undersigned are aware of at least 80 portfolios affected by this ruling, representing approximately $18 billion in shareholder investments. Hundreds of thousands of dollars in needless meeting costs will be borne by shareholders or affiliates of the funds if the ruling is allowed to stand. Added to this are additional expenses incurred if a quorum is not initially attained and subsequent mailings are necessitated.

If the Division is not persuaded to acquiesce in funds not complying with their undertakings in view of the Division's subsequent determination that such meetings are not required by law, we suggest less costly alternatives that would not compromise the rights shareholders already have. The Division could issue a public statement that initial meetings are no longer required, and that funds will not be obligated to hold meetings notwithstanding prior undertakings. Alternatively, funds could notify shareholders explaining the change of interpretation by the Division. In our experience this is substantially less costly than conducting a shareholder meeting.

For these reasons we request that the Division reverse its decision to require funds to act in accordance with their prior undertakings to hold an initial shareholder meeting. As

preparations for shareholder meetings begin several months before the meeting is held, work must begin shortly for many of the funds impacted by the Divisions' decision. We therefore request that you issue your decision on this petition as soon as possible.

Respectfully yours,

William M. Tartikoff
General Counsel

Beth-ann Roth
Associate General Counsel

Joined by:

The AIM Family Funds
The Benham Group
The Boston Company
Colonial Management Associates, Inc.
Delaware Group of Funds
Eaton Vance Management
The Evergreen Group
The First Investors Family of Funds
Gradison McDonald Funds
John Hancock Mutual Funds
John Nuveen and Co. Inc.
Massachusetts Financial Services Company
National Securities and Research Corporation
NationsFund
Pioneer Mutual Funds
Sanford C. Bernstein Fund, Inc.
SchwabFunds
Shearson Lehman Brothers Family of Funds
Strong/Corneliuson Capital Management, Inc.
SunAmerica
T. Rowe Price Associates, Inc.
T.N.E. Fund Group
Peter O. Torvik, Chief Executive Officer of the Great Hall Investment Fund
United Group of Funds
Waddell & Reed Funds