

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-133227

DATE: SEP 13 1976

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MATTER OF: Securities registration fees for mutual funds.

**DIGEST:** Even though Securities and Exchange Commission finds that open-end management companies (i.e., mutual funds) currently incur security registration fees disproportionate to their size and that they rationally can be distinguished from other companies registering for public offerings of securities, we are not aware of any authority for the Commission to issue regulations which would, in effect, waive statutory registration fee imposed by section 6(b) of Securities Act of 1933, 15 U.S.C. § 77f(b), with respect to that dollar amount of newly issued securities which merely replace securities redeemed during preceding year.

We have been asked by the General Counsel, Securities and Exchange Commission for our opinion concerning the adoption of a rule which would, in certain limited circumstances, waive the registration fee prescribed in section 6(b) of the Securities Act of 1933, as amended, Pub. L. No. 73-22, Ch. 38, title I, 48 Stat. 74, 15 U.S.C. § 77f(b) (1970).

Section 6(b), 15 U.S.C. § 77f(b), provides:

"At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 percentum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such a fee be less than \$100."

The Commission is considering promulgating a regulation prescribing a different means of calculating the registration fee for open-end management companies, commonly known as mutual funds. Under the Investment Company Act of 1940, as amended, Pub. L. No. 76-768, Ch. 686, title I, 54 Stat. 789, 15 U.S.C. § 80a-1, et seq., open-end management companies are a type of investment company offering redeemable securities. See 15 U.S.C. §§ 80a-3(a), 80a-4(3) and 80a-5(a)(1). Open-end management companies are constantly issuing new shares to the public and therefore, are continuously in registration. These companies also continuously

redeem their own shares; in effect, many newly-issued shares are replacements for recently redeemed shares. The General Counsel states that these shares do not represent additional securities in the hands of the public. The need to register new shares frequently results in open-end funds incurring filing fees disproportionate to their size. For example, we have been informally advised by a Commission representative that high volume mutual funds, especially so-called money market funds, may incur registration fees in amounts up to tens of thousands of dollars per month, based largely on numerous sales and redemptions. One mutual fund paid \$120,000 in fees for a 3-month period.

The Commission representative further advises that the purpose of the continuing registrations with which we are here concerned is merely to update the initial registration by the number of additional shares which the fund anticipates selling because of redemptions. The form used to accomplish this purpose is relatively simple in relation to the initial registration form and Commission's task is essentially to check the mathematical calculations made by the company and see that the form is properly signed. This task has been described to us as being ministerial in nature, involving relatively small amounts of staff time. We are advised that the cost to the Commission of approving this change in the initial registration form in no way approximates the registration fees now charged mutual funds with frequent shareholders turnover. It was further pointed out to us that mutual funds will still be required to pay fees to the Commission for such things as filing their proxy materials and their reports on annual meetings.

The Commission is considering adopting a rule which would provide that, in the case of open-end management companies, the prescribed registration fee (for registrations which, in effect, are revisions in the initial registration) may be calculated on the basis of the difference between the maximum offering price of new shares and the market value of shares redeemed during the previous calendar year. Such a rule would in effect waive the registration fee with respect to the dollar amount of newly-issued open-end management company securities replacing securities redeemed during the previous year. It is the view of the General Counsel that the Commission possesses the authority to adopt a new rule for the calculation of registration fees for securities issued by open-end management companies by virtue of both section 19(a) and the Securities Act of 1933, as amended, 15 U.S.C. § 77s(a) (1970), of section 38 of the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-37(a) (1970).

The provisions of 15 U.S.C. § 77s(a) state in part:

"§77s. Special powers of Commission

"(a) The Commission shall have authority from time to time to make, amend, and rescind such rules and

regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter \* \* \*."

Also, 15 U.S.C. § 80a-37(a) provides:

" 80a-37. Rules, regulations, and orders; general powers of Commission

"(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters."

Although the Commission is given broad authority to make necessary rules and to prescribe different requirements for different classes of securities, there is nothing in the Securities Act of 1933 which gives the Commission authority to waive the statutory fee or to assess, in effect, a different fee for different classes of securities. Whether or not the Commission feels that mutual funds by the nature of their business incur fees disproportionate to their size and to the cost to the Commission of processing these updated registrations, the language of section 6(b) in clear and unambiguous terms requires that the fee be calculated as a percentage of the maximum aggregate price at which securities are proposed to be offered.

Accordingly, we are unaware of any authority for the Commission to issue a regulation to provide that in the case of open-end management companies, the registration fee may be calculated on the difference

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between the maximum offering price of new shares and the market value of shares redeemed during the previous calendar year.

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*Acting*

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