

MEMORANDUM

December 21, 1959

To: The Staff, Division of Corporation Finance

From: Byron D. Woodside, Director

Subject: The disclosure required in a prospectus of give-ups and reciprocal business to dealers in the shares of investment companies

Reference is made to the Commission's opinion in the matter of Managed Funds, Inc. (1933 Act Release No. 4122) and the Memorandum of Administrative Practice No. 121 and the addendum thereto. In the case of Puritan Fund, Inc. the following disclosure was accepted as adequate in this area:

“Dealers with whom the Distributors have sales agreements purchase shares at a maximum discount of 6% from the offering price to investors on transactions of less than \$25,000. The balance of the sales charge is retained by the Distributors. The discount from the applicable public offering price is alike for all dealers. Dealers may receive or participate in customary and standard brokerage commissions on purchases or sales of investment securities for the fund. Hornblower & Weeks, a general distributor of the fund, may also participate in such commissions, and during the year ended July 31, 1959, did so to the extent of \$36,733. The Fund may also buy such securities from or sell such securities to dealers acting as principals. While there is no undertaking or agreement to do so, it is the practice of the Fund, so far as it is practicably possible while seeking the most favorable prices and execution of orders, to place a portion of such business with eligible dealers, using their relative sales of Fund shares as a factor in the allocation. During the last fiscal year over one-half of such business was allocated to eligible dealers who had sold shares of the Fund. In some instances, such business was allocated to dealers who provided statistical and other factual information.”

It should be emphasized that the disclosure obtained in each case is dependent upon the practices of the company involved and that each case should be handled upon the basis of the particular facts involved.

In the instant case it appeared that slightly more than half of the company's brokerage business (including give-ups) was handled by brokers who affected sales in the fund's shares. In addition, about 17 brokers who received such business provided various services to the company, and about 22 other brokers also received brokerage commissions. It was represented that the brokerage business and give-ups as accorded to participating dealers established no pattern in relation to the amount of fund shares sold by them. Accordingly, the statement that the sale of Fund shares was a “factor” in the allocation was deemed adequate in this case.

The statement that business was allocated to dealers who provided statistical and other factual information was deemed necessary in view of the Commission's opinion in the Managed Fund case. It will be noted that dollar figures as to the amount of such business allocated to dealers who distribute the fund's shares were not required.