

GORDON ALTMAN BUTOWSKY WEITZEN SHALOV & WEIN
114 WEST 47TH STREET
NEW YORK, N.Y. 10036

THEODORE ALTMAN
DAVID M. BUTOWSKY, P.C.
RONALD M. FEIMAN
KENNETH S. GERSTEIN
JEFFREY M. GUSOFF
STEPHEN A. HELMAN
RICHARD M. HERVEY
PAUL RICHARD KARAN
IRVING H. PICARD
BONNIE D. PODOLSKY

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HILLEL Y. GOLDSTEIN
STACY L. KATZ

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BRUNO DOV LERER
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LAWRENCE A. LONDON
FELICIA A. MENNIN
CARIN F. MUHLBAUM
RICHARD A. ROTH
HOLLY G. RUSSELL
BRUCE D. SHAPIRO
CLAIRE R. TELECKI
JEFFREY L. TRAUM
JUDSON K. VICKERS
ISAAC M. ZUCKER



WRITER'S DIRECT DIAL NUMBER
(212) 626- 0842

TELEPHONE (212) 626-0800
TELECOPIER (212) 626-0799

C. LEONARD GORDON
DENNIS H. GREENWALD
BERNARD WEXLER
COUNSEL

ICA/Section 20(a)
ICA/Rule 20a-1
SEA/Rule 14a-3
Regulation S-X/Rule 3-18

November 10, 1992

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

Ladies and Gentlemen:

We are writing on behalf of Dean Witter American Value Fund, Dean Witter California Tax-Free Income Fund, Dean Witter Multi-State Municipal Series Trust ("Multi-State"), Dean Witter New York Tax-Free Income Fund, Dean Witter Tax-Exempt Securities Trust, Dean Witter U.S. Government Securities Trust, Dean Witter Utilities Fund, Dean Witter Variable Investment Series, Dean Witter/Sears California Tax-Free Daily Income Trust, Dean Witter/Sears New York Municipal Money Market Trust, Dean Witter/Sears Tax-Free Daily Income Trust, and Sears Tax-Exempt Reinvestment Fund (collectively, the "Funds"), to request confirmation of advice we understand has been given orally by members of the staff of the Division of Investment Management (the "Division") of the Securities and Exchange Commission (the "Commission") that the Division would not recommend enforcement action to the Commission under Section 20(a) of the Investment Company Act of 1940, as amended (the "1940 Act"), and Rule 20a-1(a) thereunder if, under the circumstances described below, the proxy statements (the "Proxy Statements") for the special meeting of shareholders (the "Meeting") of each Fund called to be held on either January 12 or 13, 1993 (the "Meeting Date") are not accompanied or preceded by an annual report of each Fund for its last fiscal year ending prior to the Meeting which

contains the information prescribed in Rule 14a-3(b) ("Rule 14a-3") under the Securities Exchange Act of 1934, as amended (the "1934 Act").

I. FACTS

Dean Witter Reynolds Inc. ("DWR"), through its Intercapital Division (the "Investment Manager"), acts as investment adviser to the Funds, as well as investment adviser to 37 other registered investment companies (collectively with the Funds, the "DWR Funds"). DWR is presently a wholly-owned subsidiary of Dean Witter Financial Services Group Inc. ("DWFSG"), itself a wholly-owned subsidiary of Sears, Roebuck and Co. ("Sears"). As of October 17, 1992, the Funds collectively had net assets of approximately \$20.19 billion and approximately 894,000 shareholders. As of such date, the DWR Funds collectively had net assets of approximately \$50.65 billion and approximately 3.9 million shareholders. All of the DWR Funds, other than the Funds, have fiscal years ending October 31 or earlier. Each of the Funds, other than Multi-State, have a fiscal year ending on December 31 of each calendar year and Multi-State has a fiscal year ending on November 30 of each calendar year. The fiscal years of the DWR Funds are staggered throughout the year to minimize the accounting burden with respect to any particular fiscal period.

On September 29, 1992, Sears announced plans to sell up to 20% of the shares of Common Stock of DWFSG to the public (the "IPO"). It is anticipated that the sale will be followed by a Spin-Off of the remaining 80% of DWFSG shares to Sears shareholders (the "Spin-Off"). As a result, DWFSG will become a publicly-owned company.¹

Sears, a widely-held, diversified enterprise, announced the IPO and the Spin-Off in connection with an overall restructuring of its business, which, in addition to DWFSG, currently includes: (i) Sears Merchandise Group, which,

^{1/} In an unrelated development, the Investment Manager (currently a division of DWR) will become a corporate subsidiary of DWFSG, and will continue to act as an investment adviser to the Funds and the Other DWR Funds.

based on quantity of sales of merchandise and services, is among the largest retailers in the world; (ii) Allstate Insurance Group ("Allstate"), whose business includes property-liability insurance and life insurance; and (iii) Coldwell Banker Real Estate Group ("Coldwell Banker"), which invests in, develops and manages real estate, performs residential real estate brokerage and engages in the formation and sale of mortgage-related activities and mortgage banking. In an effort to effectuate its strategy to focus its activities primarily in its retailing business, in addition to the IPO and Spin-Off, Sears also has announced plans to sell certain of its Coldwell Banker holdings and to offer publicly a 20% stake in Allstate. The IPO is scheduled to occur in the early part of 1993. Such date has been determined by Sears as part of its overall strategy to reorganize its business, the reasons for and scope of which has been and is subject to numerous business and market considerations not directly or solely related to DWFGS or the IPO.

II. DISCUSSION

Purpose of the Meetings.

Section 15(a) of the 1940 Act provides in pertinent part that:

It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and

(4) provides, in substance, for its automatic termination in the event of an assignment.

Although the DWR Funds and the Investment Manager have concluded that neither the IPO nor the Spin-Off will be deemed to be an "assignment" as defined in Section 2(a)(4) of the

1940 Act (a conclusion as to which the staff of the Division has indicated they concur), like most legal conclusions, such conclusion can not be reached with absolute certainty. Accordingly, given the dramatic consequences to the DWR Funds if their existing investment advisory agreements with the Investment Manager were deemed to be terminated pursuant to Section 15(a) as a result of either the IPO or the Spin-Off, the DWR Funds have decided that they will voluntarily submit "new" advisory arrangements approved by their directors and trustees to a vote of shareholders prior to the scheduled date of the IPO.

Reasons for Election of Directors.

Each of the DWR Funds are Maryland corporations or Massachusetts business trusts and, accordingly, are not legally required to hold annual meetings for the election of directors. Nevertheless, in light of the determination to hold a meeting for the purpose of approving new advisory contracts, the DWR Funds believe it appropriate to take the opportunity to also seek to elect directors at the Meeting. Such action will afford the DWR Funds maximum flexibility to add new directors in the future should the need arise, without having to incur the expense of conducting another shareholders meeting for such purpose.²

In this regard, it is important to note that the Investment Manager and the DWR Funds desire to obtain the safe harbor protection of Section 15(f) of the 1940 Act, in order to eliminate any risk associated with the possibility that the IPO or the Spin-Off could be deemed to constitute an assignment of the advisory contracts. One condition of Section 15(f) is that, for a period of three years following a transaction which results in an assignment of an advisory contract, at least 75% of the Board of Directors of the investment company may not be interested persons of the

^{2/} Section 16(a) of the 1940 Act permits vacancies in the Board of Directors which occur between meetings to be filled by the Board without a shareholder vote provided that immediately after filling such vacancy at least two-thirds of the directors have been elected by shareholders.

investment adviser. As currently constituted, the Boards of the DWR Funds do not satisfy the foregoing condition.³ In view of the foregoing, as well as various other anticipated changes in the configuration of the Boards of the DWR Funds, it is likely that new directors will have to be added to the Boards. In addition, it should also be recognized that the composition of the Boards of all of the DWR Funds are identical and the DWR Funds all hold joint Board meetings.

Timing of the Meeting.

Sears has announced that it plans to effect the IPO in the early part of 1993. In this regard it is believed that, given the magnitude of the revenues received by the Investment Manager from the DWR Funds, the IPO would be adversely affected if there were any doubt whatsoever at the time of the IPO regarding the Investment Manager's continuing right to receive fees under its advisory contracts with the DWR Funds. Accordingly, it is considered crucial to the success of the IPO that the vote of shareholders of the DWR Funds be held and the "new" contracts be approved prior to the IPO. As a result, the DWR Funds have called for special meetings of their shareholders to be held on either January 12 or 13, 1993.

The DWR Funds anticipate that, given, among other things, the number of shareholders of all of the DWR Funds, a minimum of 60 days will be required following the mailing of proxy material to the shareholders in order to reasonably assure that a number of shareholders representing a quorum of shares of each DWR Fund will have returned executed proxy cards by the Meeting Date. Accordingly, the DWR Funds expect to first mail proxy material to shareholders no later than the middle of November 1992.

III. INTERPRETATION OF RULE 14a-3

Rule 20a-1(a) under the 1940 Act provides, in pertinent part, that:

^{3/} At present the Boards are comprised of 7 independent directors and 4 interested directors. One interested director intends to resign effective January 1, 1993.

No person shall solicit or permit the use of his name to solicit any proxy consent or authorization in respect of any security of which a registered investment company is the issuer, except upon compliance with . . . all rules and regulations adopted pursuant to Section 14(a) of the Securities Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered on a national securities exchange.
. . .

Rule 14a-3(b) provides, in relevant part, that:

[i]f the solicitation [of any proxy consent or authorization] is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders . . . , at which directors are to be elected, each proxy statement . . . shall be accompanied or preceded by an annual report to security holders. . . .

As noted above, the Meetings are being called for the purpose of voting on the investment advisory contracts. Absent the need for such a vote, the Meetings would not be held. Thus, the Meetings cannot accurately be characterized as annual meetings or as special meetings in lieu of annual meetings. Nevertheless, because directors will be elected at the Meetings, the requirements of Rule 14a-3 could be deemed to apply. In such event, Rule 14a-3(b)(1) provides that, with respect to investment companies registered under the 1940 Act, the required annual report shall include an audited balance sheet as of the end of the last fiscal year and an audited statement of changes in net assets for the two most recent fiscal years. The "last fiscal year" is defined in Rule 14a-1(e) as the last fiscal year which ends prior to the date of the Meeting for which proxies are solicited.

As noted above, the fiscal year of each of the Funds ends on December 31 (except for Multi-State whose fiscal year ends on November 30). Thus, to the extent that Rule 14a-3 is

deemed to apply, the Funds would be required to furnish an annual report with respect to the fiscal year ending December 31, 1992 (November 30, 1992, in the case of Multi-State) (collectively, all such annual reports are referred to hereinafter as the "1992 Annual Reports"). However, it generally takes auditors approximately two months to prepare and certify an investment company's financial statements included in its annual report.⁴ As a result, each Fund's 1992 Annual Report is not expected to be available until March 1, 1993 (February 1, 1993, in the case of Multi-State). Thus, in order for the proxy materials of each Fund to be preceded or accompanied by such Fund's 1992 Annual Report, the Funds could not first mail proxy material to their respective shareholders until March 1, 1993 (February 1, 1993, in the case of Multi-State). Adding to that date the number of days necessary to mail materials and to receive responses from shareholders, the Meetings could not, therefore, reasonably be expected to occur until May 1993, well after the scheduled date of the IPO.

If the Meetings were required to be delayed until May 1993, it would result in the IPO being pushed back several months. Inasmuch as the IPO is obviously a critical component such delay could adversely effect the entire Sears' restructuring plan.

IV. LEGAL AND POLICY ARGUMENTS.

Regulation S-X permits the use of unaudited financial statements in circumstances in which audited financial statements can not, as a practical matter, be generated on a timely basis. In particular, Rule 3-18 of Regulation S-X provides limited relief from the requirement that audited financial statements as of the "last fiscal year" of the registrant be provided by permitting the use of interim unaudited financial statement (in addition to the most recent available audited statements) where the filing is made within 60 days after the end of the registrant's most recent fiscal

⁴ See Dreyfus Connecticut Municipal Money Market Fund and Dreyfus Michigan Municipal Money Market Fund (pub. avail. December 5, 1990).

year.⁵ We believe that this Rule should be available to provide the Funds with relief from the harsh results of Rule 14a-3 under the unique circumstances herein described.⁶

Read literally, Rule 3-18 applies only to financial statements required to be included in a registration statement or proxy statement and not to the financial statements included in an annual report which are not actually part of the proxy materials filed by the Funds with the Commission. Yet the Rule obviously reflects a determination that, in the absence of available audited financial statements, unaudited financial statements are adequate to enable shareholders to make an informed decision in the context of financially driven transactions such as the purchase of stock in a public offering or in a merger. We see no reason why the very same financial statements should not also be viewed as appropriate where proxies are solicited for the election of directors. This seems particularly true under the circumstances presented here where no meeting of shareholders is required to be held, the election of directors is incidental to the primary purpose of the meeting, and the shareholders of all of the DWR Funds, in addition to those of the Funds, all of which have boards of directors composed of the same individuals and all of which

^{5/} Rule 3-12 of Regulation S-X provides limited relief from the requirement that audited financial statements be provided in a proxy statement of non-investment company registrants under circumstances where the proposed mailing date of a proxy statement (as opposed to the meeting date) falls within 90 days after the end of the fiscal year.

^{6/} Rule 14a-3(b)(1) provides that the required financial statements be prepared in accordance with Regulation S-X, "except that the provisions of Article 3 (other than § 210.3-03(e), 210.3-04 and 210.3-20) shall not apply". That provision may, in our view, reasonably be interpreted to eliminate certain requirements which otherwise would have been unduly burdensome with regard to the preparation of annual reports and should not be read as restricting issuers from relying upon the permissive provisions of such article respecting the delivery of unaudited financial statements in the absence of audited financial statements.

have joint board meetings, are electing directors at the same time.

As noted above, if the Funds were required to furnish a 1992 Annual Report along with or prior to delivery of proxy material, the Funds will be forced to either delay the mailing of the proxy material for at least two months, resulting in a corresponding delay in the Meeting (with uncertain consequences for the IPO and the entire restructuring plan of Sears) or, alternatively, not provide shareholders with an opportunity to vote for directors or trustees (a situation which may require that the Funds incur the added cost and expense of re-soliciting proxies at a later date). The latter situation would be particularly anomalous in that the nominees for director are the same in each of the DWR Funds, yet, unlike the shareholders of the other DWR Funds, shareholders of the Funds would be deprived of the opportunity to vote for directors (or would have to bear the cost of holding another meeting) merely because of the happenstance of their Fund's fiscal year end.

V. APPLICABLE CONDITIONS

If this No-Action request is granted each Fund will comply with the following conditions:

1. The Fund's Proxy Statement will be accompanied or preceded by the annual report of the Fund for the Fund's fiscal year next preceding the Meeting Date. Such Annual Report will be dated no earlier than 16 months prior to the Meeting Date, and will include: (i) an audited balance sheet of the Fund as of the end of the Fund's fiscal year next preceding the Meeting Date, namely November 1, 1991 or December 1, 1991, as the case may be; and (ii) an audited statement of changes in the net assets of the Funds for the two most recent fiscal years of the Fund next preceding the Meeting Date;
2. The Fund's Proxy Statement will be accompanied or preceded by the Fund's most recent semi-annual report;
3. The Fund's Proxy Statement will include a representation from the Fund's Board of Directors that to

its knowledge there has been no material adverse change in the financial operations of the Fund since the date of the financial statements contained in the Fund's most recent semi-annual report; and

4. The Fund's Proxy Statement will include a statement that proxies solicited by the Board of Directors for the meeting will not be voted for the election of Directors unless (a) the Fund shall have received a certificate from the President of the Fund, dated the date on which such vote is to be taken, that, to the knowledge of that officer, there has been no material adverse change in the financial operations of the Fund since the date of the unaudited financial statements included in the Fund's most recent semi-annual report, unless such material adverse change has been disclosed to shareholders in additional proxy solicitation material, or (b) the Fund shall have mailed to all shareholders of record audited financial statements of the Fund in an annual report (in accordance with section 30 of the 1940 Act) and given the shareholders an opportunity to revoke any proxies previously furnished.

For purposes of conditions 3 and 4 above, changes attributable to general market or economic conditions will not be taken into account except to the extent that any such changes result from the Investment Manager's or Board of Director's improper performance of its responsibilities.

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November 11, 1992
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VI. Conclusion

Based upon the foregoing, including the unique facts related to the timing of the Funds' special meetings of shareholders, we respectfully request that the staff grant the no-action relief requested. Please call the undersigned (212-626-0842) or Jonathan Klein (212-626-0879) if you have any questions or comments.

Sincerely,



Stuart Strauss

cc: Dorothy M. Donahue
Lawrence P. Stadulis
Julia Ulstrup