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**CORRESPONDENCE MEMORANDUM**

**DATE:** October 17, 2005  
**TO:** Wisconsin Deferred Compensation Board  
**FROM:** Shelly Schueller, Director  
Wisconsin Deferred Compensation Program  
**SUBJECT:** Mutual Fund Investigations Update: Janus and American Funds

Throughout 2005, the Deferred Compensation Board (Board) has been monitoring and discussing the ongoing mutual fund investigations. Specifically, the Board has focused on two current Wisconsin Deferred Compensation Program (WDC) investment providers: Janus and American Funds. The WDC investment spectrum presently includes both the Janus Fund and the EuroPacific Growth Fund, which is offered by American Funds. This memo provides an update on both investment providers since the Board's May 2005 meeting.

**Janus Fund**

The Janus Fund has been part of the WDC since 1994. It is currently closed to new deferrals and will be phased out of the WDC at the end of 2005. The Board has been concerned with potential collateral damage to WDC Janus Fund holders resulting from numerous redemptions that followed the conclusion of investigations into the mutual fund industry and the Janus Capitol Group in particular.

At the February 2005 meeting, the Board directed staff to send a letter to Janus requesting inclusion in the pool of affected shareholders, as well as regular updates regarding the status of the development of the restoration payment plan and all other matters affecting the final settlement with regulators. Janus declined the WDC's request for restoration payment plan status or update information, but did agree to keep the WDC informed as information becomes publicly available.

At the May 2005 meeting, the Board asked staff to determine if there is any way for the Board to become involved with any legal suit against Janus regarding collateral damages assessed and the Independent Distribution Consultants evaluation. At the request of the Department, the Wisconsin Attorney General's office is reviewing the Board's position regarding Janus and has referred the matter to a staff attorney who specializes in securities issues. Department staff is waiting for the Wisconsin Attorney General's assessment, but at this point it appears that there are few avenues for the Board to become involved in any settlements proposed by the Securities and Exchange Commission (SEC) for Janus.

Reviewed and approved by Dave Stella, Deputy Secretary

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Signature

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Date

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Also at the request of the Department, attorneys at Nationwide Retirement Solutions (NRS) reviewed the situation. In their opinion, it would be difficult for the Board to become involved. SEC procedures are well defined and do not appear to permit any inclusion by third parties such as the Board in the administrative proceeding and any settlement between Janus and the SEC.

NRS suggested two additional avenues for the Board to explore:

- 1) Contacting the SEC for additional clarification or guidance on this matter; and
- 2) Discussing with legal counsel the possibility of taking legal action against Janus.

Department staff will be seeking direction from the Board at the November 2005 meeting regarding whether or not they wish to pursue this matter further with the SEC or legal counsel.

### **American Funds**

The EuroPacific Growth Fund, which is offered by American Funds, opened to WDC participants on February 1, 2005. Shortly after the fund was opened, the National Association of Securities Dealers (NASD) alleged that American Funds violated the NASD Anti-Reciprocal Rule by directing approximately \$100 million in brokerage commissions to top sellers of the American Funds. American Funds has strongly denied the NASD allegation and believes there are no facts that support this allegation. They have requested a hearing before the NASD, which they expect to occur in the spring of 2006.

In addition, American Funds and the California Attorney General filed countersuits against each other in late March 2005. American Funds filed a complaint for injunctive and declaratory relief requesting that the court find that American Funds' disclosure of additional compensation was accurate and not misleading under federal and state law, and to prevent the California Attorney General from bringing any enforcement action against American Funds for those actions. The California Attorney General is alleging that American Funds failed to adequately inform investors of \$426 million in "shelf space" payments American Funds made to brokers and dealers to sell and recommend American Funds. Hearings on procedural matters relating to these lawsuits have begun, but there is nothing substantial to report at this time.

Staff will continue to follow up with each of the investment providers discussed here and will keep the Board informed of any new developments.