

MEMO# 21129

May 9, 2007

Institute's Draft Proposal to Amend Rule 19a-1 Under The Investment Company Act; May 15th Conference Call

[21129]

URGENT/ACTION REQUESTED

May 9, 2007

TO: SEC RULES COMMITTEE No. 41-07

TAX COMMITTEE No. 20-07

ACCOUNTING/TREASURERS COMMITTEE No. 9-07

CLOSED-END INVESTMENT COMPANY COMMITTEE No. 17-07

SMALL FUNDS COMMITTEE No. 16-07 RE: INSTITUTE'S DRAFT PROPOSAL TO AMEND RULE 19A-1 UNDER THE INVESTMENT COMPANY ACT; MAY 16TH CONFERENCE CALL

Attached is a draft of the Institute's proposal to amend Rule 19a-1, [\[1\]](#) which we plan on submitting to the Securities and Exchange Commission staff for their consideration. We have included revised rule text, a comparison to current Rule 19a-1, and a letter to the staff describing our recommended rule revisions. The draft proposal is briefly summarized below.

We will be having a conference call to discuss your views on the draft proposal on Wednesday, May 16th at 2:00 EST. The dial-in number for the call is 1-888-809-8972 and the pass code is 31047.

If you can not participate on the call but have comments on the proposal, please contact Dorothy Donohue by phone at (202) 218-3563 or email at ddonohue@ici.org with respect to the disclosure related recommendations, and Keith Lawson by phone at (202) 326-5832 or email at klawson@ici.org or Greg Smith by phone at (202) 326-5851 or email at

gsmith@ici.org with respect to the accounting recommendations. If you plan to participate on the call, please contact Barbara Watkins by e-mail at bwatkins@ici.org.

The draft proposal would amend Rule 19a-1 to permit funds to satisfy their disclosure obligations under Rule 19a-1 by posting the relevant information on their own, or an affiliate's, Internet website. Under the draft proposal, closed-end funds would be required to disclose that Section 19(a) Notices will be posted to a specified website by means of a press release and mutual funds would be required to make this disclosure by means of a prospectus. All funds would be required to give shareholders the option to elect to receive quarterly Section 19(a) Notices in paper or by e-mail and to permit shareholders to change their election. Funds further would be required to disclose in their semi-annual and annual shareholder reports the availability and location of Section 19(a) Notices and the means for shareholders to receive the information quarterly in paper or email. Funds would be required to keep their Section 19(a) Notices on the website for at least twenty-four months. Finally, funds would be required to keep records of any shareholder election to receive Section 19(a) Notices on paper or through email and any revocation thereof for six years.

The draft proposal also would clarify Rule 19a-1 to prescribe the particular accounting treatment for the sources of distribution. Under the proposal, a fund's distribution would be treated as arising first from net investment income (a book concept) and calculated under generally accepted accounting principles ("GAAP"). Amounts distributed in excess of net income would be reported as net realized gains (e.g., capital gains) so long as they are supported by earnings and profits (calculated on a tax basis). The remainder of the distribution, if any, would be reported as a non-taxable return of capital calculated using tax principles, consistent with the AICPA's Statement of Position No. 93-2, Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital Distributions by Investment Companies (the "ROC-SOP"). In addition, any revisions to amounts previously reported would be required to be reported on a cumulative basis in the fund's next regularly scheduled Section 19(a) notice. Finally, the draft proposal recommends providing a de minimis exception from reporting for small amounts of capital gain or return of capital.

The draft cover letter states that we understand the staff is considering recommending that Rule 19a-1 be amended to codify staff positions permitting Section 19(a) disclosure to appear on quarterly account statements. The letter urges the staff not to take this approach because of its limited utility and associated costs. To support this recommendation, we are particularly interested in hearing whether your firm disseminates Section 19(a) information on account statements; if so, any associated expenses; and the obstacles preventing funds from disseminating information through account statements for funds sold through broker-dealers.

Dorothy M. Donohue
Senior Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) Section 19(a) requires the payment of any dividend, or a distribution in the nature of a dividend payment, to be accompanied by a written statement, (a “Section 19(a) Notice”) that adequately discloses the source(s) of a payment if it is made from any source other than accumulated undistributed net income. Rule 19a-1(a) requires the Section 19(a) Notice to be on a separate piece of paper, and to clearly indicate what portion of the payment is from: (1) net income; (2) net profits from the sale of securities or other properties; and/or (3) paid-in surplus or any other capital source.

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