

**MEMO# 17748**

July 2, 2004

## **SEC STAFF TO RELEASE COMMENT AND RESPONSE LETTERS RELATING TO FUND DISCLOSURE FILINGS, REQUESTS INPUT ON PROCESS**

[17748] July 2, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 24-04 SEC RULES COMMITTEE No. 59-04 UNIT INVESTMENT TRUST COMMITTEE No. 15-04 RE: SEC STAFF TO RELEASE COMMENT AND RESPONSE LETTERS RELATING TO FUND DISCLOSURE FILINGS, REQUESTS INPUT ON PROCESS The staff of the Securities and Exchange Commission has announced that it will make publicly available its comment letters relating to disclosure filings that are selected for review by the Divisions of Investment Management and Corporation Finance, as well as filers' letters responding to the staff's comments.<sup>1</sup> The staff's announcement is summarized below. The SEC staff is interested in receiving suggestions on how to make this new process work efficiently and has requested that comments be provided promptly. If you or others in your firm have suggestions or concerns that you believe the Institute should convey to the staff, please contact Rachel Graham by phone (202-326-5819), fax (202-326-5827) or e-mail (rgraham@ici.org) no later than Tuesday, July 13th. Release of Comment Letters and Responses. In connection with staff reviews of disclosure filings made with the SEC under certain of the federal securities laws,<sup>2</sup> the SEC currently releases the staff's comment letters and responses to those comment letters only in response to requests under the Freedom of Information Act ("FOIA") after completion of the staff review. According to the announcement, an increasing number of such letters are being released publicly through the FOIA process, but only to those persons making the FOIA request. The staff has determined that it is appropriate to expand the transparency of the comment process so that this information is available to a broader audience, free of charge. Accordingly, the staff intends to make these letters available through the SEC's Public Dissemination Service and on the agency's website. Timing. The staff will begin releasing comment and response letters relating to disclosure filings made after August 1, 2004 (with the specific date that this correspondence will 1 The press release announcing the staff's decision is available on the SEC's website at <http://www.sec.gov/news/press/2004-89.htm>. 2 These laws are the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. 2 become publicly available to be announced later). In applying the August 1st date, the staff indicated that it will look to the filing that is the primary focus of the review. The announcement states, for example, that if the staff reviews an amendment to a fund registration statement filed before August 1st and, in connection with that review, also reviews a Form N-CSR filed after August 1st, the staff would not make the relevant

correspondence publicly available through the new process. The staff further indicated that there will be at least a 45- day lag between completion of a staff review and public release of the correspondence relating to that review. Confidential Treatment. Under applicable SEC rules, a filer requesting confidential treatment for some portions of a written response to a staff comment letter is required to submit two documents: a response with the confidential information redacted, and a complete response that is marked “confidential.” Pursuant to the new process, the staff currently intends to release only the redacted version of any response letter that is subject to a request for confidential treatment.<sup>3</sup> Addition of “Tandy” Language to All Initial Comments. Currently, the staff may ask filers to represent in writing that they will not use the SEC’s comment process as a defense in any securities-related litigation (a so-called “Tandy” letter). According to the announcement, since the staff will be making all comment letters and responses publicly available (either in response to a FOIA request or pursuant to the new process), it will ask all companies whose filings are reviewed for such representation. Rachel H. Graham Assistant Counsel 3 The announcement specifies that anyone wishing to view the full response letter would be required to submit a FOIA request seeking that information.

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