

MEMO# 18184

November 10, 2004

SEC NO-ACTION RELIEF GRANTED REGARDING APPLICATION OF RULE 38A-1 TO CLOSED-END FUND UNDERWRITERS

[18184] November 10, 2004 TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 20-04 CLOSED-END INVESTMENT COMPANY MEMBERS No. 72-04 COMPLIANCE ADVISORY COMMITTEE No. 105-04 SEC RULES MEMBERS No. 159-04 RE: SEC NO-ACTION RELIEF GRANTED REGARDING APPLICATION OF RULE 38a-1 TO CLOSED-END FUND UNDERWRITERS

The Institute is pleased to report that, in response to a request submitted by the Institute,¹ the staff of the Division of Investment Management has provided assurances that they would not recommend any enforcement action to the Commission if closed-end funds do not comply with Rule 38a-1 with respect to any principal underwriter of the fund that that does not undertake regularly to serve or act as a principal underwriter for the fund. The staff's response states its belief that Rule 38a-1 was intended to require investment companies to adopt and implement written policies designed to prevent violation of the federal securities laws by service providers, including principal underwriters, who provide ongoing services to investment companies. Accordingly, the staff granted the requested relief based on the brief and limited nature of the relationship that closed-end fund underwriting syndicate members have with a closed-end fund. The staff also noted in its response that Rule 38a-1 does not require an investment company's compliance policies and procedures to cover an investment adviser that, for example, provides an isolated research report to the investment company or its adviser and notes that an annual review of the adequacies of such an adviser's policies and procedures would not be very useful. The staff also acknowledged that an annual review of the many advisers that may provide the investment company with similar limited services would be very burdensome. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18184, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18184. 1 See Memorandum to Closed-End Investment Company Members No. 65-04 [18016], dated September 22, 2004.