

MEMO# 2244

October 5, 1990

SEC PROPOSES AMENDMENT TO RULE 31A-2

11/ The contents of these documents form the basis for the investment company's financial statements as required under Section 30 of the 1940 Act. October 11, 1990 TO: CLOSED-END FUND COMMITTEE NO. 22-90 SEC RULES COMMITTEE NO. 55-90 INTERNATIONAL FUNDS TASK FORCE NO. 23-90 COMPLIANCE COMMITTEE RE: SEC PROPOSES AMENDMENT TO RULE 31a-2 _____ The SEC has proposed an amendment to Rule 31a-2 under the Investment Company Act of 1940 to specify which investment company books and records must be kept in the United States and to require that certain books and records be maintained in the English language. The purpose of the proposed amendment is to facilitate the SEC's ability to conduct examinations of investment company books and records, particularly in the case of the growing number of investment companies that invest in foreign securities. A copy of the proposing release is attached. The proposed amendment would add a new subparagraph (g) to Rule 31a-2. The new provision would require any registered investment company to (1) keep a set of the books and records specified in Rule 31a-1(a) and (b)1/1 in the United States, for the first two years at an office where someone familiar with the investment company maintains and keeps those books and records current in the manner in which they are kept in the ordinary course of business, and (2) preserve in the English language the books and records specified in Rule 31a-1(a) and (b) that are created by the investment company. With respect to the first requirement set forth above, the release notes that "[m]ere storage of the books and records in an off-site storage facility would not be enough to satisfy the proposed requirement." On the other hand, an investment company would not be required to have its principal office in the United States and could satisfy the proposed recordkeeping requirement by preserving its books and records, for example, with a transfer agent or administrator located in the United States. According to the proposing release, the proposed amendment does not require an investment company to keep original books and records in the United States; duplicates produced by facsimile machine, computer medium, carbon or photocopy, for example, would be acceptable for purposes of the proposal. The release states that most of the documents subject to the English language requirement are columnar in nature and could satisfy the requirement either by including subheadings in English or through use of a template that could be superimposed over the document. Contemporaneous translations of documents also would be permitted. The proposing release requests comments on a number of specific topics, including: (1) whether the proposed requirements would in any way impede U.S. investment companies from participating in foreign markets; (2) whether the rule should specify time frames for different types of records to satisfy the "keeping current" requirement; (3) whether U.S. investment companies should be permitted to provide translations of books and records upon request by the Commission; (4) whether certain

documents should be exempted from the English language requirement; (5) whether the English language requirement would impose undue burdens on U.S. investment companies and, if so, what alternatives are available; and (6) whether the Commission should reexamine generally its investment company recordkeeping requirements. Comments on the proposed amendment must be filed by early December (60 days after publication of the release in the Federal Register). Please contact me by Friday, November 16 with any questions you may have for inclusion in an Institute comment letter. Frances M. Stadler
Assistant General Counsel Attachment

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.