

MEMO# 1018

March 6, 1989

SEC PROPOSES RULE EXPANDING TIME PERIOD FOR SELECTION OF ACCOUNTANTS UNDER SECTION 32(A)(1)

March 6, 1989 TO: SEC RULES MEMBERS NO. 16-89 CLOSED-END FUND MEMBERS NO. 14-89 RE: SEC PROPOSES RULE EXPANDING TIME PERIOD FOR SELECTION OF ACCOUNTANTS UNDER SECTION 32(a)(1)

Section 32(a)(1) of the Investment Company Act of 1940 makes it unlawful for any registered management investment company to file with the SEC any financial statement signed or certified by an independent public accountant unless such accountant was selected by a vote, cast in person, of a majority of the company's disinterested directors. This provision further requires that the selection take place at a meeting held either (1) within thirty days before or after the beginning of the fiscal year, or (2) before the annual meeting of shareholders in that year. A fund that does not hold an annual meeting of shareholders because such a meeting is not required by the state law under which the fund is organized must, under section 32(a)(1), select its accountant at a board of directors meeting held within thirty days before or after the beginning of the fund's fiscal year. Because fund complexes typically establish funds with staggered fiscal year-ends and have overlapping boards of directors that meet jointly, strict application of this section could in some complexes create the need to hold almost monthly board meetings. Such scheduling also could limit detailed review of the accountant's performance by the audit committee and the board's review of the audit committee's recommendations. In light of these considerations, a number of complexes have obtained individual exemptive orders under section 6(c) permitting expansion of this "60-day window." In June 1988, the Institute requested that the SEC issue a rule codifying generally the results reached in these individual exemptive orders as well as no-action relief pending rulemaking action. Attached is a copy of SEC Release No. IC-16842, which proposes a new rule 32a-3 expanding the 60-day window under certain circumstances (Attachment A). Also attached is a copy of the favorable response of the Division of Investment Management to the Institute's no-action request (Attachment B). Proposed Rule 32a-3 Proposed rule 32a-3 would expand the 60-day window with respect to a fiscal year for any registered management investment company that is organized in a jurisdiction that does not require annual meetings of shareholders and does not hold such a meeting in that fiscal year. The extent of the expansion of this window would depend upon whether the fund were part of a family of funds and whether the funds in the family had staggered fiscal year-ends. If the fund were part of a family in which not all funds had identical fiscal year-ends, the accountant could be selected at a board of directors meeting held within 90 days before or after the beginning of the fund's fiscal year (the "180-day

window"). On the other hand, a fund that was either not part of a family of funds or was part of a family each of whose members had identical fiscal year-ends could select its accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of its fiscal year (the "120-day window"). The Release notes that the rule as proposed would not apply to companies that hold annual shareholder meetings and requests comment on whether such companies need to use the expanded windows. In addition, the Release cautions that rule 32a-3, if adopted, would supersede all prior Commission orders exempting registered management investment companies from the 60-day window. No-Action Relief The Division of Investment Management states in the attached no-action response that it will not recommend enforcement action regarding registered management investment companies that do not comply with the time periods of section 32(a)(1), provided that the companies comply with all of the applicable conditions of proposed rule 32a-3. This no-action position will be effective only until the effective date of rule 32a-3, if adopted, or until the date of modification or withdrawal of the proposal. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel Attachments

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