

MEMO# 5703

March 21, 1994

INSTITUTE'S COMMENT LETTER ON PROXY RULE AMENDMENTS

March 21, 1994 TO: CLOSED-END FUND COMMITTEE NO. 8-94 SEC RULES COMMITTEE NO. 36-94 RE: INSTITUTE'S COMMENT LETTER ON PROXY RULE AMENDMENTS

The Institute has filed the attached comment letter with the SEC concerning the proposed amendments to the investment company proxy rules that we previously sent to you. (See Memorandum to Closed-End Fund Committee No. 28-93 and SEC Rules Committee No. 114-93, dated December 23, 1993.) The letter generally supports the SEC's proposal, which incorporates most of the recommendations made by the Institute in a 1986 submission to the Division of Investment Management. With respect to certain proposed amendments not addressed in the Institute's 1986 submission, the letter suggests modifications mainly designed to narrow their scope and clarify their application. Some of the Institute's specific recommendations are summarized below.

General Provisions

1. Definitions - The comment letter recommends that the proposed definition of "Administrator" be narrowed and that the proposed definition of "Distributor" be deleted. The letter opposes including funds that have a common administrator (but do not share an investment adviser or principal underwriter) within the definition of "Fund Complex."

2. Fee Changes - The letter recommends that indirect increases in fees or expenses resulting from a proposal on which a shareholder vote is solicited be required to be set forth in the proposed comparative fee table only if they are material and quantifiable.

Election of Directors

1. Management Compensation - In connection with the proposed disclosure of the aggregate compensation directors receive from all funds in a "Fund Complex" (as defined in the proposal), the letter supports the disclosure but expresses concerns about any implication by the SEC's proposing release that the compensation directors receive from serving on fund boards compromises their independence.

Approval of Investment Advisory Contract

1. Material Factors Considered by the Board - In connection with the proposed disclosure of the material factors considered by a fund's board in recommending that shareholders approve an investment advisory contract, the letter urges the SEC not to require consideration of any specific factors but rather to allow each board to determine what factors to consider.

2. Other Funds Advised by the Same Adviser - The letter reiterates the Institute's 1986 recommendation that disclosure regarding the advisory fees of other funds advised by the same investment adviser be deleted.

Approval of Distribution Plan

1. General - The letter suggests several changes to the proposed disclosure requirements in connection with proposed action on a Rule 12b-1 distribution plan, to ensure that the resulting disclosure will be relevant to shareholders' consideration of such action.

2. Multiple Class Funds - The letter states that no disclosure should be required with respect to classes as to which no shareholder vote is sought, and that it is not necessary to discuss differences among classes (as is proposed) since shareholders generally can vote only on proposals relating to

the class of shares they own. Miscellaneous 1. Five Percent Beneficial Owners - The letter proposes that open-end funds only be required to disclose beneficial owners of more than 25% of their voting securities (rather than more than 5% as is currently required). With respect to an institution or its affiliate that acts as investment adviser to a fund and has voting authority (in its capacity as trustee or otherwise) over more than 25% of the fund's shares, the Institute recommends disclosure as to how those shares will be voted in certain instances. This recommendation is intended to reduce any perceived need for more stringent restrictions in this area (uch as those proposed in Chairman Dingell's pending bill concerning bank-advised mutual funds, which would require pass-through or proportional voting in certain circumstances). Frances M. Stadler Associate Counsel Attachment

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