

MEMO# 2380

December 11, 1990

SEC NO-ACTION LETTER ALLEVIATING TIMING PROBLEMS UNDER PROXY RULES CONCERNING ADVISER'S BALANCE SHEET AND SHAREHOLDER MEETING

December 11, 1990 TO: SEC RULES MEMBERS NO. 84-90 RE: SEC NO-ACTION LETTER
ALLEVIATING TIMING PROBLEMS UNDER PROXY RULES CONCERNING ADVISER'S BALANCE
SHEET AND SHAREHOLDER MEETING

_____ The Division of Investment Management recently issued the attached no-action letter alleviating two timing problems that many funds were experiencing under the proxy rules in connection with the requirements to furnish the fund's annual report and a certified balance sheet of the fund's adviser as of the adviser's most recent fiscal year-end. Relief From Proxy Rule Requiring Certified Balance Sheet Of Fund's Adviser as of the Adviser's Most Recent Fiscal Year-End In response to a no-action request on the issue discussed below, the staff took the opportunity to grant industry wide relief from the requirement under Rule 20a-2 that a fund include in its proxy statements for shareholder meetings a certified balance sheet of the fund's adviser as of the end of the adviser's most recent fiscal year. In 1988, the Institute submitted a no-action letter requesting relief from Rule 20a-2 on the grounds that since shareholder meetings of investment companies are often held shortly after the fiscal year-end of the investment company's adviser, the investment adviser may not have available a certified balance sheet until two months after the end of its fiscal year. In addition, investment companies generally need two months subsequent to receiving the adviser's balance sheet to mail and obtain responses to proxy statements. The staff denied the Institute's no-action request and, in its response, stated that it was inappropriate to grant industry wide relief through the no-action process. The staff has now reversed its position. Investment companies may rely on the staff's no-action position under Rule 20a-2, provided that they include in their proxy materials the four items outlined in the attached letter. Funds are Permitted to Delay Initial Shareholder Meeting To Sixteen Months After Commencement of Operations In its January 11, 1990 industry comment letter, the staff formally expressed its view that a newly registered investment company must undertake to hold a shareholder meeting within the first year following commencement of operations. Under Rule 14a-3 of the Exchange Act, funds are required to deliver an annual report to shareholders prior to or with proxy statements being furnished in connection with an annual meeting. (Under Maryland and other state laws, a meeting at which the election of directors is considered is deemed to be an annual meeting.) Many investment companies prefer to fix their first fiscal year-end one year from the last day of the month immediately preceding the effective date of their registration statement to spread the first year fiscal expenses

over the longest possible time. These investment companies would not have annual reports available until fourteen months after the effective date of their registration statements. Thus, these funds would not have annual reports available to send out with their proxy materials if they were to comply with the undertaking requirement. In response to this problem, the staff stated that it would be reasonable for funds to undertake that they will hold a public shareholder meeting within sixteen months after commencement of operations. Amy B.R. Lancellotta Assistant General Counsel Attachment

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