

MEMO# 7338

October 11, 1995

INSTITUTE COMMENT LETTR ON PROPOSED AMENDMENTS TO RULE 17F-5

1 See Memorandum to Closed-End Fund Committee No. 39-95, International Committee No. 20-95, SEC Rules Committee No. 88-95, Unit Investment Trust Committee No. 60-95, Rule 17f-5 Ad Hoc Subcommittee, dated August 1, 1995. October 11, 1995 TO: ACCOUNTING/TREASURERS COMMITTEE No. 42-95 CLOSED-END FUND COMMITTEE No. 48-95 INTERNATIONAL COMMITTEE No. 30-95 SEC RULES COMMITTEE No. 110-95 UNIT INVESTMENT TRUST COMMITTEE No. 75-95 RULE 17f-5 AD HOC SUBCOMMITTEE RE: INSTITUTE COMMENT LETTR ON PROPOSED AMENDMENTS TO RULE 17f-5

As we previously informed you, the Securities and Exchange Commission issued for public comment proposed amendments to Rule 17f-5 under the Investment Company Act, the rule that governs the custody of investment company assets outside of the United States.¹ A copy of the Institutes comment letter on the proposed amendments, which is briefly summarized below, is attached. The Institutes letter expresses strong support for several of the proposed amendments, including the amendments that would: (1) reduce burdens on fund directors by permitting them to delegate responsibilities under the rule to the funds investment adviser, the funds officers, or a United States or foreign bank; (2) focus Rule 17f-5 exclusively on custody risk by incorporating a reasonable protection of fund assets standard in the rule; and (3) make it easier for foreign banks and foreign securities depositories to serve as eligible foreign custodians for funds. The letter also recommends several modifications to the proposed amendments, including that amended Rule 17f-5: (1) expressly provide that delegates only are subject to a reasonable care standard in exercising custodial responsibilities; (2) only prohibit a fund from maintaining its assets with an affiliated foreign bank if it is otherwise not in compliance with Rule 17f-2; (3) not prohibit an affiliated foreign custodial arrangement where the affiliation arises solely from the foreign custodian (or its affiliate) owning twenty-five percent or less of the voting securities of the fund (or its affiliate); (4) make evaluations of a countrys prevailing custodial risks part of the custodial selection process; (5) require a funds board to be provided with certain representations about the funds primary custodians global custodial network when a fund initially establishes a contractual relationship with the custodian and material changes in a funds custodial arrangements no less frequently than annually; (6) require foreign custodial contracts to contain certain provisions, including that the fund will be indemnified or insured if there is a loss because a custodian did not exercise reasonable care; and (7) permit funds investing outside of the United States to place and maintain all of their assets purchased outside of the United States with an eligible foreign custodian. Dorothy M. Donohue Assistant Counsel Attachment

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