

MEMO# 17318

March 30, 2004

SEC PROPOSES AMENDMENTS TO EDGAR SYSTEM RULES TO IDENTIFY SERIES AND CLASSES AND MANDATING ELECTRONIC FILING OF FIDELITY BONDS AND LITIGATION MATERIALS

[17318] March 30, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 14-04 SEC RULES COMMITTEE No. 28-04 SMALL FUNDS COMMITTEE No. 21-04 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 3-04 RE: SEC PROPOSES AMENDMENTS TO EDGAR SYSTEM RULES TO IDENTIFY SERIES AND CLASSES AND MANDATING ELECTRONIC FILING OF FIDELITY BONDS AND LITIGATION MATERIALS The Securities and Exchange Commission has proposed amendments to its rules relating to electronic filing under Regulation S-T.¹ The proposed amendments will require open-end investment companies and insurance company separate accounts to obtain unique identifiers for each of their series or classes (or contracts, in the case of separate accounts) and include the identifiers in electronic filings. The series and class identifiers are intended to allow the Commission staff and the public to search the EDGAR system for filings relating to a particular series, class or contract. The SEC has also proposed to add several investment company filing types to the list of filings that must be made electronically. Comments on the proposal are due to the Commission by May 24th. If you have comments on the Commission's proposal that you would like to be included in a possible Institute comment letter, please contact Greg Smith by phone at 202/326-5851 or email at smith@ici.org by April 23rd.

A. Identification of Series, Classes and Contracts The Proposing Release notes that many open-end investment companies are organized as single registrants with several series or portfolios. Further, each series or portfolio may issue multiple classes of shares. Series and classes of shares are often marketed separately without reference to other series or classes, or to the registrant's name. Individual contracts of insurance company separate accounts are also marketed separately and make filings under the name of the Investment Company Act registrant.

1 See Proposed Rule: Rulemaking for EDGAR System, SEC Release Nos. 33-8401; 34-49426; 35-27816; 39-2417; IC-26388 (March 16, 2004) (the "Proposing Release"). The Proposing Release is available from the Commission's website at <http://www.sec.gov/rules/proposed/33-8401.htm>.

2 The EDGAR System keeps records of filings on an investment company registrant basis. However, EDGAR cannot identify the particular series, class or contract to which a filing relates. The Commission proposes to require open-end management investment companies to obtain unique identifiers for their series, classes and contracts and to include them in electronic filings. The proposed identifiers will enable the Commission staff and the investing public to search the EDGAR

System and identify filings on behalf of a particular series, class or contract. 1. Series, Class and Contract Identifiers Proposed Rule 312 under Regulation S-T will require open-end management investment companies filing on Forms N-1A, N-3, N-4, and N-6 ("S/C Funds") to obtain identifiers for their series, classes and contracts and use the identifiers to indicate the series, class or contract for which a filing is made. Under the Commission's proposal, S/C Funds will be required to enter their series, class and contract information into a specially created EDGAR web page.² After this information is entered, the Commission will provide a ten-character identifier via email. The Proposing Release indicates that S/C Funds will have approximately six months to obtain identifiers. After the conclusion of the six-month period, EDGAR would not accept specified filings that do not include the identifiers. Series, classes and contracts created after conclusion of the six-month period would receive identifiers in response to the substantive filing that added the new series, class or contract. For example, a newly registered open-end fund filing on Form N-1A would add its new series and/or classes in its initial N-1A EDGAR submission template. The identifiers for the new series and classes added via the submission template would be provided to the fund via email notification. 2. Requirement to Include Identifiers in EDGAR Filings If a S/C Fund failed to enter its information and receive identifiers during the six-month period, Commission staff may require the S/C Fund to file a post-effective amendment to generate the identifiers via the submission template. Until the S/C Fund provides the information concerning its series and classes and is issued identifiers, it would be unable to make other filings that require series and class identifiers. After conclusion of the six-month period, S/C Funds will be required to use the identifiers in all filings relating to their series, classes and contracts. Failure to include the identifiers would mean that a filing for that series, class or contract has not been made. Filings requiring identifiers would be suspended if the identifiers are not included in the EDGAR filing or if they are not identifiers associated with the registrant. The Commission requests comment on its proposal to require S/C Funds to identify in their EDGAR submissions information relating to their series, classes and contracts. Is the general approach reasonable? Is the proposed time period appropriate? 2 A S/C Fund that is not organized as a series company would be deemed to have one series and must obtain a series identifier and include that identifier in its filings. 3 B. Mandatory Electronic Filings Currently, investment companies must submit in paper filings of fidelity bonds under Section 17(g) and litigation material filed under Section 33 of the Investment Company Act. In addition, those companies required to file sales literature with the SEC must submit those filings in paper form. The Commission proposes to amend Rule 101 of Regulation S-T to make these submissions mandatory electronic submissions.³ The Proposing Release notes that filings under Section 17(g) consist of the registrant's fidelity bond, and claims and settlements. Filings of litigation material under Section 33 include a wide variety of documents including: (1) all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim; (2) any proposed settlement, compromise, or discontinuance of such action or claim; and (3) motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. The Proposing Release notes that electronic copies of these documents would be made available to the public through the EDGAR system. The Proposing Release requests comment on the impact and feasibility of making these filings mandatory electronic filings. Gregory M. Smith Director of Operations – Compliance & Fund Accounting 3 Most investment company registrants file sales literature with the National Association of Securities Dealers, in lieu of filing with the SEC, as permitted by Investment Company Act Rule 24b-3. The Commission is not proposing any changes to Rule 24b-3.

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