

MEMO# 18178

November 9, 2004

SEC STAFF PROVIDES GUIDANCE ON STAFF REVIEW OF SHAREHOLDER PROPOSALS

[18178] November 9, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 42-04 SEC RULES COMMITTEE No. 86-04 RE: SEC STAFF PROVIDES GUIDANCE ON STAFF REVIEW OF SHAREHOLDER PROPOSALS The staff of the Securities and Exchange Commission's Division of Corporation Finance recently issued a staff legal bulletin that clarifies and updates its guidance on issues that commonly arise under Rule 14a-8 under the Securities Exchange Act.* The staff clarified its views regarding the bases for a company to exclude language in supporting statements and shareholder proposals. The staff stated that it would no longer be appropriate in many cases to exclude or modify language in supporting statements because the shareholder proponent, and not the company, is responsible for the content of the statement. The staff stated that, going forward, it would not be appropriate for companies to exclude supporting statement language and, or, an entire proposal in several circumstances, including when the company objects to factual assertions that are not supported or that may be disputed or countered. Rather, companies may address their objections in their statements of opposition. The staff also provided examples of when it would be appropriate to exclude or modify a supporting statement. For example, statements that impugn personal reputation and factual statements that have been demonstrated objectively by the company to be materially false or misleading may be excluded or modified. The staff provided guidance on other topics, including the following: • common issues regarding companies' notices of defect(s); • circumstances under which companies and shareholder proponents should provide an opinion of counsel; and • public availability of no-action requests and responses. Dorothy M. Donohue Associate Counsel * Securities and Exchange Commission, Division of Corporation Finance: Staff Legal Bulletin No. 14B (September 15, 2004). This bulletin is available on the SEC's website at <http://www.sec.gov/interp/legals/cfs1b14b.htm>.