

MEMO# 11468

December 15, 1999

SEC APPROVES NYSE PROPOSAL REGARDING CLOSED-END FUND CONTINUED LISTING STANDARDS

1 Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999). [11468] December 15, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 48-99 RE: SEC APPROVES NYSE PROPOSAL REGARDING CLOSED-END FUND CONTINUED LISTING STANDARDS

The Securities and Exchange Commission ("SEC") has approved a proposed rule change filed by the New York Stock Exchange ("NYSE")¹ amending the NYSE Listed Company Manual and making corresponding changes to NYSE rules relating to the criteria governing the continued listing of closed-end funds. Under the adopted amendments, a fund would be subject to immediate suspension and delisting procedures if the average market capitalization over thirty consecutive trading days is below \$15 million or the fund ceases to maintain its closed-end status. The NYSE will notify the fund if the average market capitalization falls below \$25 million and will advise the fund of the listing standard. Funds would no longer be subject to the procedures of having to submit plans to the NYSE to re-establish their compliance with the continued listing criteria. Funds however would continue to be subject to a minimum market price criteria of \$1.00 per share. The adopted amendments differ significantly from the version originally proposed. As proposed, until a closed-end fund had operated for three years, it would have been held to a continued listing standard of \$30 million in both total market capitalization and net assets. Regardless of the length of time a fund had been operating at the time of its initial listing, once it had operated for three years, it would have been held to the financial criteria generally applicable to operating companies. Specifically, a closed-end fund would have been subject to suspension and delisting if: (i) its global market capitalization and its net assets each fell below \$50 million, or (ii) its average global market capitalization was below \$15 million over thirty consecutive trading days. The Institute filed a comment letter with the SEC encouraging the NYSE to reconsider its original proposal. In particular, the Institute's letter stated that while it may be advisable to codify specific continued listing criteria for closed-end funds, adopting any such criteria must be done in a careful and deliberate manner, taking into account the unique characteristics of these funds. The letter also stated that given these unique characteristics, the fact that it is more difficult for closed-end funds to raise additional cash than it is for operating companies because of restrictions under the Investment Company Act, and the fact that volatility in the total market capitalization and net assets of many funds is beyond the fund's control and is unrelated to its suitability for listing, the Institute does not believe that it is appropriate to subject closed-end funds to the same continued listing criteria as operating companies. We therefore recommended

that the NYSE consider lowering the continued listing standard for closed-end funds. In the release adopting the proposed rule change, the SEC states that it “recognizes that [f]unds are not traditional operating entities and therefore, it is not possible to apply the same standards specified as continued listing criteria for other listed companies.” The SEC also states that it believes that the NYSE’s proposed continued listing standards serve as an acceptable means for delisting those funds that the NYSE believes are unsuitable for continued listing because of insufficient size and that notifying funds when their average market capitalization falls below \$25 million will adequately inform these funds that they are in jeopardy of immediate delisting if their market capitalization should fall to \$15 million. A copy of the SEC’s adopting release is attached. Ari Burstein Assistant Counsel
Attachment

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