

MEMO# 10359

October 7, 1998

ICI COMMENT LETTER ON SEC PROPOSED AMENDMENTS TO RULE 15A-4

* See Memorandum to Closed-End Investment Company Committee No. 19-98 and SEC Rules Committee No. 92-98, dated September 18, 1998. 1 [10359] October 7, 1998 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 21-98 SEC RULES COMMITTEE No. 99-98 RE: ICI COMMENT LETTER ON SEC PROPOSED AMENDMENTS TO RULE 15a-4

The Institute recently filed with the Securities and Exchange Commission the attached comment letter on the Commission's proposed amendments to Rule 15a-4 under the Investment Company Act of 1940. The rule permits an investment adviser to a fund, in certain circumstances, to serve temporarily under an interim contract that has not received shareholder approval. The proposed amendments would, among other things, extend the rule to adviser mergers and increase the time period during which the adviser may serve under a contract without shareholder approval from 120 days to 150 days. The letter is substantially similar to the draft letter previously circulated to you.*

Adviser Mergers The Institute's letter generally supports the Commission's proposal, but recommends certain changes. For example, as proposed, the amendments would impose certain conditions on the interim contract and require a fund's board to find that the scope and quality of advisory services to be provided under the interim contract will be equivalent to the scope and quality of services provided under the terminated contract. The letter supports the Commission's overall objective of protecting shareholder interests but recommends against requiring fund boards to make specific findings in favor of a finding that the interim contract is in the best interest of fund shareholders. The proposed amendments also would impose an escrow requirement on advisory fees under the interim contract and would permit advisers to receive only the cost portion of their escrowed fees in the event a fund's shareholders disapprove the successor contract. The letter supports the Commission's proposal to permit an adviser to be compensated for providing advisory services to a fund even if the successor contract is not approved, but opposes limiting that compensation to the adviser's actual costs. The letter explains that where an adviser performs bona fide services to a fund and where the fees imposed under the interim contract do not exceed the fees paid under the previous contract, which had already received board and shareholder approval, permitting the adviser to earn a reasonable profit should not be objectionable. The letter adds that this recommendation also would obviate the need for the proposed escrow arrangement.

2Board Approval In the case of an unanticipated assignment of an advisory contract, the proposed amendments would provide the board up to seven calendar days in which to approve an interim contract. The letter generally supports this proposal but recommends that the grace period be extended to ten calendar days instead, so as to allow the board more time to make an informed decision. The letter also supports the Commission's proposal to facilitate a special board meeting by permitting board participation to occur via

telephone or similar means of communication that allows all participants to hear each other at the same time. Length of Exemptive Period The letter supports the Commission's proposal to increase the maximum number of days the adviser can serve under an interim contract without shareholder approval, but recommends that the time period end as of the last day of the month in which the 150th day falls. The letter explains that this approach would minimize disruptions to the orderly management and administration of a fund by coordinating the termination period of the interim contract with a fund's normal financial, compliance and reporting cycles. The letter also suggests that, to avoid possible ambiguity in the case of adviser mergers, the Commission should specify when the exemptive period begins. It recommends that the time period should begin on the date the previous contract terminates. Barry E. Simmons Assistant Counsel Attachment

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