

MEMO# 7952

June 11, 1996

SEC STAFF POSITION REGARDING SHAREHOLDER PROPOSAL TO CONVERT TO AN INTERVAL FUND

June 11, 1996 TO: CLOSED-END FUND COMMITTEE No. 16-96 SEC RULES COMMITTEE No. 57-96 RE: SEC STAFF POSITION REGARDING SHAREHOLDER PROPOSAL TO CONVERT TO AN INTERVAL FUND

_____ The Division of Investment Management recently issued the attached no-action letter agreeing not to recommend enforcement action if a closed-end fund excluded a shareholder proposal from its proxy statement that would have required the funds board of directors to adopt a fundamental policy to convert the fund to interval status. The funds letter put forward several bases under the proxy rules for omitting the shareholder proposal. (See Rule 14a-8(c) under the Securities Exchange Act of 1934.) In response, the staff stated that a mandatory proposal to adopt interval status may be excluded as not being a proper subject for shareholder action under state law and because such a proposal would not permit fund directors to fulfill their federal fiduciary duty to consider the appropriateness of converting to interval status. The staff refused to grant no-action relief on the basis that the shareholder proposal violates the proxy rules, deals with a matter relating to the ordinary business operations of the fund, is counter to a proposal being submitted to shareholders to open end the fund or relates to a specific amount of dividends. The staff stated, however, that the shareholder proposal may not be excluded if it was revised as a recommendation or request for action by the board regarding conversion to interval status. The staff also directed the fund to give the shareholder an opportunity to revise the proposal within seven calendar days. Dorothy M. Donohue Assistant Counsel Attachment