

MEMO# 1282

August 2, 1989

SEC ADOPTS RULE EXPANDING TIME PERIOD FOR SELECTION OF ACCOUNTANTS UNDER SECTION 32(A)(1)

- 1 - August 2, 1989 TO: SEC RULES MEMBERS NO. 36-89 CLOSED-END FUND MEMBERS NO. 34-89 RE: SEC ADOPTS RULE EXPANDING TIME PERIOD FOR SELECTION OF ACCOUNTANTS UNDER SECTION 32(a)(1)

Attached is a copy of SEC Release No. IC-17077, which adopts a new rule 32a-3 under section 32(a)(1) of the Investment Company Act of 1940. Section 32(a)(1) requires that the independent public accountant signing or certifying any financial statement filed with the SEC with respect to a registered management investment company be selected by a vote, cast in person, of a majority of the company's disinterested directors either (1) within thirty days before or after the beginning of the fiscal year, or (2) before the annual meeting of shareholders in that year. A fund that does not hold an annual meeting of shareholders because such a meeting is not required by the state law under which the fund is organized must, under section 32(a)(1), select its accountant at a board of directors meeting held within thirty days before or after the beginning of the fund's fiscal year. Because fund complexes typically establish funds with staggered fiscal year ends and have overlapping boards of directors that meet jointly, strict application of this provision could in some complexes create the need to hold almost monthly board meetings. Such scheduling also could limit detailed review of the accountant's performance by the audit committee and the board of directors. In light of these considerations, a number of complexes have obtained individual exemptive orders under section 6(c) permitting expansion of this "60-day window." In June 1988, the Institute requested that the SEC issue a rule codifying generally the results reached in these individual exemptive orders, and the SEC proposed rule 32a-3 in March 1989. (See Institute Memorandum to SEC Rules Members No. 16-89 and Closed-End Fund Members No. 14-89, dated March 6, 1989.) The final rule, which will become effective on August 28, - 2 - 1989, expands the 60-day window with respect to a fiscal year for any registered management investment company that is organized in a jurisdiction that does not require it to hold regular annual meetings of shareholders and does not hold a regular shareholder's meeting in that fiscal year. The extent of the expansion of this window depends upon whether the fund is in a set of investment companies and whether the funds in the set have identical fiscal year ends. A set of investment companies is defined under the rule as any two or more registered management investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and (1) that have a common investment adviser or principal underwriter, or (2) if the investment adviser or principal underwriter of one of the companies is an affiliated person of the investment adviser or principal underwriter of each of the other companies. If the fund is part of such a set of investment companies in which not all

members of the set have identical fiscal year ends, the accountant may be selected at a board of directors meeting held within 90 days before or after the beginning of the fund's fiscal year (the "180-day window"). On the other hand, a fund that is either not in such a set of investment companies or is in a set each of whose members has the same fiscal year end may select its accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of its fiscal year (the "120-day window"). We will keep you informed of developments. Kathy D. Ireland Assistant General Counsel Attachment

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