

MEMO# 9234

September 11, 1997

SEC STAFF AFFIRMS APPLICATION OF TRANSFER AGENT NOTIFICATION REQUIREMENT TO MUTUAL FUND TRANSFER AGENTS

1 The SEC has designated the Depository Trust Company ("DTC") as the appropriate QRSD for purposes of the Rule. 2 The Institute argued that, among other things: (1) since depositories typically play no role in the clearance and settlement process for mutual fund shares (which are not DTC-eligible), requiring notification of DTC in the event of mutual fund transfer agent changes would not advance the purposes of the Rule; (2) interpreting the Rule not to apply to mutual fund transfer agents would be consistent with exclusions for mutual fund transfer agents under certain other SEC rules governing transfer agent activities; and (3) notification of DTC is not necessary, because mutual fund transfer agents are easily identified and located. [9234] September 11, 1997 TO: COMPLIANCE ADVISORY COMMITTEE No. 24-97 OPERATIONS MEMBERS No. 19-97 SEC RULES MEMBERS No. 67-97 TRANSFER AGENT ADVISORY COMMITTEE No. 47-97 RE: SEC STAFF AFFIRMS APPLICATION OF TRANSFER AGENT NOTIFICATION REQUIREMENT TO MUTUAL FUND TRANSFER AGENTS

Rule 17Ad-16

under the Securities Exchange Act of 1934 (the "Rule") requires a transfer agent to notify the appropriate qualified registered securities depository ("QRSD")¹ in writing when it (1) ceases to perform transfer agent services on behalf of an issuer, (2) changes its name or address, or (3) assumes transfer agent services on behalf of an issuer of securities. To address certain ambiguities as to the applicability and scope of the Rule, the Institute recently explored with the staff of the Securities and Exchange Commission the feasibility of obtaining interpretive advice to the effect that the Rule does not apply to mutual fund transfer agents. As discussed below, the Institute has learned that it is the staffs view that the Rule applies to all transfer agents. Through a series of communications with the SEC staff, the Institute requested their concurrence that the Rule does not apply to mutual fund transfer agents, except in certain limited circumstances.² In addition, in the event the staff determined that the Rule does apply to mutual fund transfer agents, the Institute requested their concurrence that neither the initial transfer agent for a new mutual fund, nor the initial transfer agent for a new portfolio of an existing mutual fund, is required to provide any notice to DTC pursuant to the rule upon the commencement of transfer agent services for that fund or portfolio. The staff recently expressed disagreement with the Institutes proposed interpretation of the Rule and took the position that the Rule applies to all transfer agents, including mutual ³ The staffs views, which were communicated orally, did not address whether a transfer agent assuming transfer agent services for a new portfolio

of an existing fund must file a notice with DTC. fund transfer agents. In addition, the staff asserted that the Rule requires mutual fund transfer agents to notify DTC not only when there is a change in the transfer agent for an existing fund (or the transfer agents name or address), but also when a transfer agent assumes transfer agent services for a newly-organized fund.³ Finally, the staff indicated that it would not be inclined to respond favorably to any request for no-action relief from the Rules requirements for mutual fund transfer agents. Mutual fund transfer agents should consider reviewing current procedures and revising them, if necessary, to ensure compliance with the above-described SEC staff positions regarding the requirements of Rule 17Ad-16. Barry E. Simmons Assistant Counsel

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