

**MEMO# 8372**

November 5, 1996

# **DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 18F-3 AND RULE 12B-1**

1 See Memorandum to Accounting/Treasurers Committee No. 36-96 and SEC Rules Committee No. 100-96, dated September 13, 1996. November 5, 1996 TO: ACCOUNTING/TREASURERS COMMITTEE No. 42-96 SEC RULES COMMITTEE No. 118-96 RE: DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 18f-3 AND RULE 12b-1

As we previously informed you, the SEC has proposed to amend Rule 18f-3 to expand and clarify the methods a fund may use to allocate income, gains and losses, and fundwide expenses among its classes.<sup>1</sup> The proposed amendments also would clarify the voting rights of "purchase" class shareholder regarding any proposed "target" class fee increase. In addition, a proposed amendment to Rule 12b-1 would clarify that a series funds Rule 12b-1 plan must be severable for each series and that whenever an action is required with respect to the plan, that action must be taken separately for each series. Attached for your review is a draft of the Institutes comment letter on the proposed amendments. Our proposed comments and related issues are summarized below. Comments on the proposed amendments must be filed with the SEC by November 18, If you have any comments on the attached draft letter, please contact Frances Stadler at 202/326-5822 or the undersigned at 202/326-5851 by November 14. Accounting Allocation Methods The draft letter supports the Commissions proposal to allow multiple class funds that declare dividends daily to use the "Settled Shares" allocation methodology without requiring the fund to maintain the same NAV per share in each class. The letter also supports the proposal to allow daily dividend multiple class funds to allocate gains and losses based on relative net assets, while using the Settled Shares method for allocating income and fundwide expenses. The proposing release noted that many funds operate in this latter manner and requested comment on whether allocation of gains and losses based on relative net assets and allocation of income and fundwide expenses based on Settled Shares should be mandatory for funds using the Settled Shares method. Do members think it should be mandatory or permissive? Would a mandatory requirement be a problem for funds that do not accept and price purchase orders until they have received good funds? The draft letter supports the proposal to permit multiple class funds to use the "Simultaneous Equations" allocation methodology. The proposing release sought comments on whether the equations utilized in this method should be specified in the rule. The draft letter recommends that the rule exclude the equations. Do members agree? In response to the Commissions request for comments on whether there are other allocation methods that should be included in the rule or whether a fund should be able to use any allocation method that results in shareholders of each class receiving their proportionate share of income, gains and losses, and fundwide expenses,

the draft letter indicates that upon adoption of the proposed amendments, Rule 18f-3 will provide multiple class funds with a sufficient range of accounting allocation methods. The letter also expresses concern that the ability of a fund to develop and employ any accounting allocation method could lead to questionable allocation methods that may not be in the best interests of all shareholders. Do members agree with this proposed position? Alternatively, should funds be allowed to use any allocation method that results in shareholders receiving their proportionate share of income/expenses and gains/losses? If so, should a specified party such as the adviser, the auditor or the board be required to make a determination that the allocation method is fair? Clarification of Shareholder Voting Rights/Amendment to Rule 12b-1 The draft letter supports the proposed amendment to Rule 18f-3 to clarify the voting rights of "purchase class" shareholders with respect to increases in "target class" expenses and the proposed amendment to Rule 12b-1 regarding series funds as described above. Gregory M. Smith Director - Operations/ Compliance & Fund Accounting Attachment

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