

MEMO# 10299

September 18, 1998

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

1 See Memorandum to Closed-End Investment Company Committee No. 14-98 and SEC Rules Committee No. 75-98, dated July 30, 1998. [10299] September 18, 1998 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 19-98 SEC RULES COMMITTEE No. 92-98 RE: DRAFT COMMENT LETTER ON SEC PROPOSED AMENDMENTS TO RULE 15a-4

Attached for your review is a draft of the Institute's comment letter on the Securities and Exchange Commission's proposed amendments to Rule 15a-4 under the Investment Company Act of 1940, which permits an investment adviser, in certain circumstances, to advise an investment company temporarily under a contract that has not received shareholder approval.¹ The proposed amendments would, among other things, extend the rule to adviser mergers, and increase the time period during which the investment adviser may serve under a contract without shareholder approval from 120 days to 150 days. The draft letter is summarized below. Comments on the proposed amendments to Rule 15a-4 are due to the SEC by September 30th. Please provide your comments on the draft letter to Frances Stadler by Friday, September 25th. She can be reached by phone at (202) 326-5822, by fax at (202) 326-5827, or by e-mail to frances@ici.org. Adviser Mergers The Institute's draft letter generally supports the Commission's proposed amendments to Rule 15a-4, particularly the proposal to extend the exemption to include adviser mergers. The proposed amendments, which essentially would codify prior exemptive orders in this area, would impose certain conditions on the interim contract, such as requiring that (i) the interim contract generally contain the same terms and conditions as the terminated (or "previous") contract, (ii) the interim contract be approved by the fund's board of directors, including a majority of the independent directors, before the interim contract begins, and (iii) the board, including a majority of the independent directors, find that the scope and quality of the advisory services to be provided under the interim contract will be at least equivalent to the scope and quality of the services provided under the previous contract. The Institute's draft letter supports the Commission's overall objective of protecting shareholder interests but recommends against imposing 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 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 reasons that the conditions under which the adviser

would be compensated (i.e., the fees to be paid under the interim contract would be subject to board approval and could not exceed the fees paid under the previous contract, which already received board and shareholder approval), should mitigate any concerns about the payment of excessive management fees. The letter adds that this recommendation also would obviate the need for the proposed escrow arrangement. Board 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 draft 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 draft letter supports the Commission's proposal to increase the maximum number of days the adviser can serve under an interim contract without shareholder approval. The letter recommends that the time period end as of the last day of the month in which the 150th day falls. The letter states 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 draft 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 begin on the date the previous contract terminates. Barry E. Simmons Assistant Counsel Attachment