

MEMO# 9437

November 19, 1997

SEC PROPOSES NEW RULE GOVERNING DELIVERY OF DOCUMENTS TO HOUSEHOLDS

1 Securities and Exchange Commission Release Nos. 33-7475, 34-39321 and IC-22884 (Nov. 13, 1997). 2 15 U.S.C. 77b(a)(10), 77d(1), 77e(b). [9437] November 19, 1997 TO: OPERATIONS COMMITTEE No. 40-97 TRANSFER AGENT ADVISORY COMMITTEE No. 67-97 SEC RULES COMMITTEE No. 113-97 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 47-97 UNIT INVESTMENT TRUST COMMITTEE No. 68-97 RE: SEC PROPOSES NEW RULE GOVERNING DELIVERY OF DOCUMENTS TO HOUSEHOLDS

The Securities and Exchange Commission recently proposed for public comment a new rule under the Securities Act of 1933, and amendments to rules under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. The proposal would enable issuers and broker-dealers to satisfy those Acts prospectus and shareholder report delivery requirements, with respect to two or more investors sharing the same address, by sending a single document to that address under certain conditions.¹ The purpose of this proposal is to provide greater convenience for investors and cost savings for issuers by reducing the amount of duplicative information that investors receive. A copy of the proposal, which is summarized below, is attached. The SEC has solicited comments on a number of provisions of this proposal. Comments on the proposal are due to the SEC by Monday, February 2, 1998. If you have comments or issues that you would like to be included in the draft comment letter that the Institute is preparing, please contact me (telephone: 202/326-5819, fax: 202/326-5827 or e-mail: savage@ici.org) no later than Friday, December 12, 1997.

Delivery of Prospectuses to a Household

The Securities Act generally prohibits an issuer or underwriter from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security.² If several persons purchase the same security and share the same household, the prospectus delivery requirements may result in the mailing of multiple copies of the same prospectus to a household. In order to reduce the number of duplicative prospectuses delivered to investors, the SEC has proposed to adopt a new Rule 154 under the Securities Act, 3 See 17 C.F.R. 240.14a-3(e)(1), 240.14c-7 note 2. The securities holders also may not hold the securities in nominee name, which would provide that delivery of a prospectus to one investor would be deemed to have occurred with respect to all investors who share the same address, provided certain conditions are met. The proposed rule would be available for all persons who have prospectus delivery obligations under the Act except when the prospectus is required to be delivered in connection with business combination transactions, exchange offers or reclassifications of securities, since those prospectuses generally are accompanied by proxies or tender offer material that must be executed by

each individual investor. The conditions required for delivering a single prospectus to multiple investors at the same address are: (1) the prospectus is delivered to at least one of the investors, at any address of that investor; (2) the prospectus is addressed to a natural person; and (3) the other investors consent in writing to this manner of delivery. For purposes of the rule, the term "address" would not be limited to a postal address and could include an electronic address (such as an e-mail address or fax number). The rules application would not be limited to a family unit or a residence; thus an issuer could deliver a single prospectus to any group of persons who share the same address as long as each investor consents in writing. In order to allow for changing the investor who receives the prospectus (e.g., if the investor moves to a different address), the consent of the investors at the shared address would not designate the specific person to whom the prospectus would be delivered. The SEC also has proposed to permit householding without written consent under certain conditions for investors who established accounts before the effective date of the rule. The investors in the household would have to be provided with notice, 60 days before initial reliance on the rule, that future prospectuses will be delivered to only one person who shares the address. Additionally, the investors must have the same last name, or if they have different last names, a person who relies on the rule must reasonably believe that they are members of the same family. The prospectus also must be delivered to a street address reasonably believed to be a residence, or to a shared post office box or electronic address if the investors are reasonably believed to share a residence. If an investor revokes his or her consent and requests resumption of delivery of prospectuses, individual delivery of future documents would have to be resumed after 30 days.

Delivery of Shareholder Reports to a Household The SEC is proposing amendments to Rules 30d-1 and 30d-2 under the Investment Company Act to permit investment companies to deliver one shareholder report per household. The conditions for using the proposed amendments would be substantially the same as those in proposed Rule 154. The SEC also is proposing similar amendments to Exchange Act proxy rules 14a-3, 14c-3, and 14c-7. The proxy rules currently allow delivery of a single copy of an annual report to security holders having the same address where those not receiving the annual report have consented in writing.³ The amended rules would allow householding through implied consents for investors who became securities holders before the date the amendments become effective. Joseph P. Savage, Assistant Counsel