

MEMO# 7270

September 15, 1995

INSTITUTE'S DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17F-5 UNDER THE 1940 ACT

1 See Memorandum to Closed-End Fund Committee No. 39-95, International Committee No. 20-95, SEC Rules Committee No. 88-95, Unit Investment Trust Committee No. 60-95, and Rule 17f-5 Ad Hoc Subcommittee, dated August 1, 1995. September 15, 1995 TO: ACCOUNTING/TREASURERS COMMITTEE No. 34-95 CLOSED-END FUND COMMITTEE No. 46-95 INTERNATIONAL COMMITTEE No. 27-95 SEC RULES COMMITTEE No. 103-95 UNIT INVESTMENT TRUST COMMITTEE No. 71-95 RE: INSTITUTE'S DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17f-5 UNDER THE 1940 ACT

As we previously advised you, the Securities and Exchange Commission recently issued a release, seeking comments on proposed amendments to Rule 17f-5, the rule that governs the custody of investment company assets outside of the United States.¹ The Institutes draft comment letter expresses general support for the Commissions proposed amendments, especially (1) the amendments that would eliminate the current requirements that obligate fund boards to make detailed findings of fact, (2) the amendments that would incorporate a reasonable protection of fund assets standard in Rule 17f-5, and (3) the amendments that would make it easier for foreign banks and foreign securities depositories to serve as eligible foreign custodians. The draft letter also suggests several changes to the proposal, including: (1) making evaluations of a countrys prevailing custodial risks part of the custodial selection process; (2) requiring fund delegates to provide a funds board with certain representations about the funds custodian and its global custodial network when the fund initially enters into a custodial agreement; (3) requiring fund delegates to inform the board of material changes in a funds custodial arrangements annually (instead of at the next scheduled board meeting); (4) requiring foreign custody contracts to contain several provisions, including one that specifies that the fund will be indemnified or insured if there is a loss because the custodian did not exercise reasonable care; (5) prohibiting affiliated foreign custodial arrangements, except where the affiliation arises solely from the custodian or its affiliate owning five percent of the funds voting securities; (6) expanding the class of eligible foreign custodians to include a securities depository, that together with other depositories or clearing agencies, operates a system for the central handling of securities in a particular country; (7) permitting funds that primarily invest outside of the United States to place and maintain all of their assets purchased outside of the United States with an eligible foreign custodian; and (8) permitting Canadian funds to generally use foreign custody arrangements on the same basis as U. S. funds. The draft letter also recommends that the Commission consider proposing a rule that would permit unit investment trusts to hold their assets outside of the United States. Attached for your review

is the Institutes draft comment letter. The letter must be filed with the Commission by October 6, 1995. Therefore, please contact me by September 26th with any comments or suggestions. Dorothy M. Donohue Assistant Counsel Attachment

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