

MEMO# 15466

December 18, 2002

SEC PROPOSAL REGARDING ISSUER REPURCHASES OF STOCK UNDER RULE 10B-18 OF THE EXCHANGE ACT

[15466] December 18, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 54-02 SEC RULES COMMITTEE No. 105-02 RE: SEC PROPOSAL REGARDING ISSUER REPURCHASES OF STOCK UNDER RULE 10b-18 OF THE EXCHANGE ACT The Securities and Exchange Commission has proposed amendments to Rule 10b-18 under the Securities Exchange Act of 1934, the rule that provides issuers with a “safe harbor” from liability for manipulation when they repurchase their common stock in the market in accordance with the rule’s conditions.* The Release states that the proposed amendments are intended to simplify and update Rule 10b-18 in light of market developments since the rule’s adoption. The Commission also has proposed amendments that would require disclosure by an issuer of any repurchases of its equity securities registered under Section 12 of the Exchange Act. The Institute will be preparing a comment letter on the proposal. If you have any views on particular matters that the Institute should consider addressing in its comments, please provide them to me by phone (202/218-3563), e-mail (ddonohue@ici.org), or fax (202/326-5827) by January 10, 2003. Set forth below is a summary of the significant aspects of the proposal. I. Proposed Amendments to Rule 10b-18 A. Price of Purchases Rule 10b-18’s current price limitations vary depending on the market for the security. Under the proposal, a uniform price condition would apply that would limit issuers to purchasing their securities at a price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system (regardless of where the securities are traded). * SEC Release Nos. 33-8160, 34-46980, IC-25845 (December 10, 2002) (“Release”) [67 FR 77594 (December 18, 2002)]. A copy of the Release is available on the SEC’s website at <http://www.sec.gov/rules/proposed/33-8160.htm>. 2 B. Volume of Purchases Rule 10b-18 currently permits an issuer to effect daily purchases of its stock in an amount up to 25% of the average daily trading volume (“ADTV”) in its shares. Block purchases by an issuer, however, are not subject to the 25% volume limitation and are not included when calculating a security’s ADTV. The proposed amendments would eliminate this special treatment for block purchases. As a result, to qualify for the safe harbor, issuers would have to include block purchases in applying the 25% volume limitation and in calculating their ADTV. C. Trading After a Circuit Breaker Rule 10b-18 generally excludes from the safe harbor issuer purchases at the opening and during the last half-hour of trading. To facilitate liquidity in the trading session following a market-wide trading suspension or circuit breaker, however, issuers have more flexibility to purchase their securities. Specifically, Rule 10b-18’s safe harbor includes issuer purchases made at the reopening, during the last half-hour prior to the scheduled close of trading, and at the next day’s opening if a market-

wide trading suspension was in effect at the scheduled close of trading. During such trading session, all other Rule 10b-18 conditions apply to issuer purchases. Under the proposal, issuers would retain the flexibility in the current rule but the volume limitation would be increased from 25% to 100% of the ADTV for the trading session immediately after a market-wide trading suspension.

D. New York Stock Exchange Petition for Rulemaking The Release seeks comment on a NYSE petition for rulemaking that would make Rule 10b-18's safe harbor available to an issuer for a category of "special purchases" effected by an independent trustee during a period of unusual volatility in the issuer's stock.

II. Proposed Disclosure Requirements

A. General Requirements The Commission has proposed requiring disclosure of all issuer repurchases of equity securities that are registered under Section 12 of the Exchange Act. The proposed disclosure requirement would be independent of the Rule 10b-18 safe harbor. Issuers would be required to disclose the total number of shares purchased, the average price paid per share, the identity of any broker-dealer(s) used to effect the purchases, the number of shares purchased as part of a publicly announced repurchase plan, and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans. Closed-end investment companies would be required to make this disclosure semi-annually on proposed Form N-CSR. The Release requests comment on whether the Commission should require issuers to disclose information about their repurchase activity more frequently (e.g., on a monthly basis, within 10 days of the transaction, or on a current basis). The Release also requests comment on several aspects of the proposed disclosure requirement, including: (i) whether there should be different treatment of de minimis repurchases; (ii) whether the proposed disclosure requirement should be made a condition of the safe harbor; and (iii) whether issuers should be required to maintain records concerning the trade details of repurchases.

3 B. Closed-End Funds Closed-end funds currently are required to disclose information regarding privately negotiated repurchases of their securities on Form N-23C-1 not later than the tenth day of the calendar month following the month in which the purchase occurs. In addition, closed-end funds currently are required to disclose the aggregate number of shares and net consideration paid for all repurchases and redemptions of their common and preferred stock during the semi-annual reporting period on Form N-SAR. The Release states that additional information regarding repurchases by closed-end funds would be useful to investors. Accordingly, under the proposal, while the Commission is not proposing to amend closed-end funds' current reporting requirements on Forms N-23C-1 or N-SAR, closed-end funds would be required to provide the disclosure described above semi-annually on proposed Form N-CSR. The Release requests comment on several aspects of the proposed disclosure requirement including: (i) whether closed-end funds should be subject to the proposed additional disclosure requirements; (ii) whether proposed Form N-CSR is the appropriate location for closed-end funds to provide this disclosure (as opposed to Forms N-SAR or N-23C-1); (iii) whether Form N-23C-1 should be eliminated; and (iv) how frequently closed-end funds should be required to disclose information regarding repurchases (e.g., quarterly).

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