

MEMO# 4573

April 1, 1993

SEC ADOPTION OF RULES REQUIRING MANDATORY ELECTRONIC FILING ON THE EDGAR SYSTEM

April 1, 1993 TO: EDGAR FILER GROUP OPERATIONS COMMITTEE NO. 9-93 UNIT INVESTMENT TRUST COMMITTEE NO. 13-93 ACCOUNTING/TREASURERS COMMITTEE NO. 13-93 MEMBER - ONE PER COMPLEX NO. 23-93 SEC RULES COMMITTEE NO. 26-93 SMALL FUNDS COMMITTEE NO. 7-93 RE: SEC ADOPTION OF RULES REQUIRING MANDATORY ELECTRONIC FILING ON THE EDGAR SYSTEM

I. INTRODUCTION Enclosed are new rules adopted by the Securities and Exchange Commission to implement the operational phase of the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. The rules require all SEC registrants, including registered investment companies and publicly held investment advisory firms, to file virtually all of their SEC disclosure filings, related exhibits and associated correspondence in electronic format. Applications for exemptive relief, no-action requests and filings under the Investment Advisers Act of 1940 are not subject to the rules. Mandated electronic filing is scheduled to begin on April 26, 1993, for selected filers. Phase-in of all registrants onto the EDGAR system is expected to be completed by November, 1995. The rules are contained in four separate releases. One release applies to filings processed by the Division of Investment Management and addresses matters unique to investment companies, business development companies and institutional investment managers reporting securities holdings under management (Release Nos. 33-6978; 34-31906; IC-19284) (the "IM Release"). Another addresses matters relevant to all electronic filings on EDGAR (Release Nos. 33-6977; 34-31905; IC-19283) (the "General Release"). The General Release applies primarily to filings processed by the Division of Corporation Finance, and to a lesser extent, to filings processed by the Division of Investment Management. A third release discusses payment of filing fees on electronic filings through a U.S. Treasury - 2 - designated lockbox depository in Pittsburgh, Pennsylvania (Release Nos. 33-6980; 34-31908; 35-25747; 39-2301; IC-19285) (the "Filing Fee Release"). The fourth release, which is not relevant to Institute members, pertains to aspects of the EDGAR system which are unique to public utility holding companies. The rules were originally proposed in August of 1992, (See Institute Memorandum to SEC Rules Members No. 34-92, Small Funds Members No. 15-92, Operations Committee No. 22-92, Unit Investment Trust Committee No. 42-92, and Accounting/Treasurers Committee No. 35-92). The following summarizes several of the more significant changes made to the rules as originally proposed.

II. THE IM RELEASE A. Phase-In Mandated electronic filing will begin on April 26, 1993, with seven investment company complexes (approximately 300 registrants) and four unit investment trust sponsors who participated in the EDGAR pilot program. The second phase-in group, which

contains eight investment company complexes (approximately 500 registrants) and ten unit investment trust sponsors, will begin mandatory filing on July 19, 1993. These first two groups will constitute a "significant test group" which Congress has stated must file successfully for at least six months before the Commission can adopt final mandatory filing rules. After the significant test group has filed successfully for a six month period, the Commission will adopt final rules for the EDGAR system. After final rules are adopted, all remaining investment companies will be phased into EDGAR in four groups, each containing approximately 600 companies, in six month intervals. The phase-in schedule is contained in Appendix A to the IM Release. The phase-in schedule is designed to bring those investment company complexes having the largest number of registrants on to the EDGAR system first. It is also designed to allow complexes that make electronic submissions to do so for all of the funds they advise, even if those funds are organized after the initial phase-in dates, avoiding the need to maintain both electronic and paper filing systems. Each registrant must file a Form ID with the SEC at least three to six months prior to its phase-in date. Form ID contains basic identifying information required for the Commission to issue the access codes that enable a registrant to - 3 - make electronic filings. After a registrant receives its access codes, it may then make test filings until its scheduled phase-in date. Registrants are encouraged to make test filings in order to become familiar with the EDGAR system. B. Exhibits The rules as initially proposed would have required that all documents associated with a filing, including exhibits be filed electronically. The rules would have permitted an investment company to incorporate by reference into an electronic filing only those exhibits that were filed electronically. This would have required all existing investment companies to refile in electronic form all exhibits previously filed on paper at the time they were phased-in. In response to comments, the rules as adopted provide investment companies with a "grace period" before all documents incorporated by reference into an electronic filing will be required to be filed electronically. During the first three years subsequent to a registrant's phase-in date, the rules require electronic filing of any amendments to a previously filed paper exhibit, unless the exhibit is the articles of incorporation, the by-laws or the investment advisory agreement, in which case the previously filed paper exhibit will have to be refiled electronically in its entirety. After three years has elapsed from a registrant's phase-in date, the registrant may incorporate by reference only those documents which have been filed electronically. C. Financial Data Schedule Registrants that are phased-in to the EDGAR system will be required to file a financial data schedule as an exhibit to certain registration statements, reports and proxy materials. The schedule will be comprised of specified financial information from the financial statements, per share table and Form N-SAR. The financial data schedule is intended to facilitate automated review of financial information and to enable Commission staff to screen selected filings for additional review. The effective date of the provisions relating to the financial data schedule has been delayed. Registrants will be required to comply with the financial data schedule provisions for filings on or after November 1, 1993. The financial data schedule will not be deemed a "filed" document for purposes of liability under the federal securities laws. - 4 - D. Rule 497 Filings Rule 497(c) of Regulation C under the 1933 Act generally requires investment companies to file ten copies of the final or definitive form of prospectus with the Commission within five days after the commencement of a public offering. Registrants phased-in to the EDGAR system will be able to comply with rule 497(c) by making an electronic filing. In response to comment, rule 497 has been amended to provide that in lieu of a complete filing under rule 497(c), electronic filers may file a certification stating that the prospectus and statement of additional information that would have been filed under rule 497(c) does not differ from that contained in the most recently filed registration statement. III. THE GENERAL RELEASE A. Signatures The rules as adopted allow required signatures for electronic filings to be submitted in typed form. The required use of personal

identification numbers (PINs), which were mandatory in the EDGAR Pilot has been eliminated. The proposing release requested comments on the necessity of requiring filers to maintain a manually signed signature page. The rules as adopted mandate the retention of a manually signed signature page or other document authenticating, acknowledging or otherwise adopting the signatures that appear in typed form within an electronic filing. The manually signed signature page will be required to be made available to the Commission or its staff upon request, for a period of five years. Further, the signature authorization must be executed before or at the time the electronic filing is made.

B. Hardship Exemptions The rules as initially proposed allowed filers to apply for either temporary or continuing hardship exemptions from electronic filing. The temporary exemption is intended to provide relief for unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing such as a power outage or equipment failure. The proposed rules would have required SEC staff to grant a request made by an electronic filer after determining that the request was appropriate and consistent with the public interest. The rules as adopted provide that an electronic filer may obtain the exemption simply by filing the subject document under cover of Form TH, Notification of Reliance on Temporary Hardship Exemption. SEC staff approval of the exemption request will not be required. However, the electronic filer will be required to file a paper copy of the document for which the exemption is sought no later than one business day after the date the filing was to be made. To assure completeness of the EDGAR database, the rule requires the filer to submit a copy of the document in electronic format within six business days of submitting the filing in paper format. An electronic filer may apply in writing for a continuing hardship exemption from the electronic filing provisions if the filer is unable to submit all or part of a filing because of undue burden, expense or impracticability. Unlike the temporary hardship exemption, the continuing hardship exemption does not require that the paper filing be followed by an electronic copy. The adopting release indicates that the Commission will not be inclined to grant continuing hardship exemptions except under extreme circumstances.

C. Schedules 13D and 13G It should be noted that notwithstanding the fact that an investment company complex has not yet been phased-in to the EDGAR system, the complex will nevertheless be required to electronically file Schedules 13D and 13G if the subject company has been phased-in to EDGAR. For example, an investment company complex which is included in the final Investment Management phase-in group will be required to file Schedule 13G electronically prior to its EDGAR phase-in if the funds for which it serves as investment adviser own in the aggregate more than 5% of the outstanding voting securities of a company which has been phased-in to the EDGAR system. If the subject company has not been phased-in to EDGAR, then the Schedule 13G would be filed in paper.

IV. ICI EDGAR CONFERENCE The Institute held a special one-day EDGAR Conference on March 25, 1993 in Washington, D.C. The conference focused on the preparation and submission of an electronic filing on the EDGAR system. Representatives of the investment company complexes who participated in the EDGAR Pilot as well as SEC staff from the Office of Information Technology, Technical Filer Support, and the Division of Investment Management made presentations to more than 300 attendees. The Institute will be offering a recording of the conference proceedings and the conference materials. For further information, please call the Institute. Gregory M. Smith Director - Operations/Compliance Enclosures