

**MEMO# 8464**

December 16, 1996

# **SEC ADOPTS RULE 17F-6 TO PERMIT INVESTMENT COMPANIES TO MAINTAIN ASSETS WITH FUTURES COMMISSION MERCHANTS**

1 SEC Release No. IC-22389 (December 11, 1996). 2 SEC Release No. IC-20313 (May 24, 1994). See Memorandum to SEC Rules Members No. 40-94, dated May 31, 1994; Memorandum to Accounting/Treasurers Committee No. 27-94 and SEC Rules Committee No. 59-94, dated May 31, 1994. December 16, 1996 TO: ACCOUNTING/TREASURERS COMMITTEE No. 49-96 CLOSED-END INVESTMENT COMPANY MEMBERS No. 42-96 SEC RULES MEMBERS No. 78-96 UNIT INVESTMENT TRUST MEMBERS No. 61-96 RE: SEC ADOPTS RULE 17f-6 TO PERMIT INVESTMENT COMPANIES TO MAINTAIN ASSETS WITH FUTURES COMMISSION MERCHANTS

The Securities and Exchange Commission has adopted Rule 17f-6 under the Investment Company Act of 1940. The rule permits (but does not require) registered investment companies to maintain their assets (i.e., margin) with futures commission merchants ("FCMs") and certain other entities in connection with commodity futures and options transactions effected on domestic or foreign exchanges. A copy of the SEC's release adopting Rule 17f-6 is attached.<sup>1</sup> The rule will become effective 30 days after its publication in the Federal Register. The final rule allows a registered investment company to place and maintain assets with an FCM that is registered as such under the Commodity Exchange Act ("CEA") and is not an affiliated person of the investment company or an affiliated person of such person. The arrangement must be governed by a written contract containing certain provisions, including that the FCM will comply with Commodity Futures Trading Commission ("CFTC") rules requiring segregation of customer assets for domestic transactions and similar CFTC requirements applicable to U.S. customers foreign trades. The contract further must provide that the FCM will furnish information pertaining to investment company assets to the SEC upon request, that any gains on commodity transactions beyond de minimis amounts may be maintained by the FCM only until the next business day, and that if the arrangement no longer meets the requirements of the rule, the investment company will withdraw its assets from the FCM "as soon as reasonably practicable." The release indicates that a five-day standard for withdrawing assets generally would be appropriate, unless the particular circumstances dictate otherwise. As originally proposed,<sup>2</sup> Rule 17f-6 would have required an investment company's board of directors, or the board's delegate, to make a finding that maintaining the company's assets with an FCM is in the best interests of the company, based on certain specified factors. In addition, the board would have been required to establish a system to monitor

compliance with the rule. We are pleased to report that, consistent with the Institute's recommendations, the rule as adopted does not impose these or any other specific responsibilities on investment company directors. Another significant difference from the proposed rule is that under final Rule 17f-6, FCMs are not required to meet net capital requirements beyond those that apply under CFTC rules. Frances M. Stadler Associate Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8464.

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