

MEMO# 15506

January 6, 2003

SEC PROPOSAL REGARDING MANDATORY ELECTRONIC FILING OF SECTION 16 REPORTS

[15506] January 6, 2003 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 2-03 SEC RULES COMMITTEE No. 1-03 RE: SEC PROPOSAL REGARDING MANDATORY ELECTRONIC FILING OF SECTION 16 REPORTS The Securities and Exchange Commission has proposed rules that would require the electronic filing of insider beneficial ownership reports under Section 16(a) of the Securities Exchange Act of 1934 and website posting of these reports by issuers with corporate websites. 1 The proposal would implement Section 403 of the Sarbanes-Oxley Act and is intended to facilitate the more efficient dissemination and analysis of insider ownership and transaction information. The Commission intends to adopt the proposed amendments as soon as reasonably practicable before the July 30, 2003 date mandated by the Sarbanes-Oxley Act. Comments on the proposal are due February 10, 2003. 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 15, 2003. Set forth below is a summary of the significant aspects of the proposal. I. Electronic Filing and Website Posting of Forms 3, 4, and 5 Rule 101(b)(4) of Regulation S-T under the Securities Act of 1933 currently permits, but does not require, reporting persons to file Forms 3, 4, and 5 on the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") System. Under the proposal, electronic filing would be made mandatory. The Release requests comment on whether there are any barriers to issuers' helping insiders to file or filing on insiders' behalf Section 16 forms and, if so, how these barriers can be reduced or eliminated. The proposal also would amend Rule 16a-3 under the Exchange Act to require an issuer that maintains a corporate website to post on its website all Forms 3, 4, and 5 filed with respect to its equity securities by the end of the business day after the forms are filed with the 1 SEC Release Nos. 33-8170, 34-47069, 35-27627, IC-25872 (December 20, 2002) [67 FR 79466 (December 27, 2002)] ("Release"). A copy of the Release is available on the SEC's website at <http://www.sec.gov/rules/proposed/33-8170.htm>. 2 Commission. The Release states that an issuer could satisfy this requirement by providing access directly to the forms or by hyperlinking to them via a third party service, provided that, among other things, there is no charge to access the forms and they are retained for at least 12 months. The Release requests comment on whether issuers whose equity securities are subject to Section 16 but do not have a corporate website should be required to disclose in Form 10-K why they are not subject to the posting requirement. II. Rule 16a-3(h) Rule 16a-3(h) under the Exchange Act currently provides that Forms 3, 4, and 5 will be "deemed timely filed" if the filing person established that the form was timely delivered to a third party entity providing

delivery services that guaranteed timely filing of the form with the Commission. The proposal would delete the “deemed timely filed” provision in Rule 16a-3(h), effective at the same time that the proposed electronic filing requirement becomes effective. The Release explains that the “deemed timely filed” provision was designed for, and only applies to, paper filings and therefore will be unnecessary once the electronic filing requirement is effective. The proposal would preserve Regulation S-T’s provisions governing the availability of hardship exemptions. The Release requests comment on whether there are any instances in which use of the “deemed timely filed” provision would remain appropriate when electronic filing is required. The Release also requests comment on whether the Commission should shorten the period, from 6 business days to 2 or 3 business days, in which an issuer would be required to file electronically after receiving a temporary hardship exemption that permitted it to file on paper. The Release asks whether this shortened time period should apply to all required filings or solely to Forms 3, 4, and 5. Alternatively, the Release requests comment on whether the Commission should eliminate the ability to use the temporary hardship exemption for Forms 3, 4, and 5. The Release also requests comment regarding whether the Commission should change its current requirements regarding electronic submission acceptance to deem all filings of Forms 3, 4, and 5 made by 10:00 p.m. Eastern time (instead of 5:30 p.m. Eastern time) to be made that day. III. Electronic Filing Procedure According to the Release, when the mandatory electronic filing of Forms 3, 4, and 5 requirement becomes effective, a new on-line filing system also will be effective. As a result, insiders will be able to access the Commission’s website to fill out and submit the required forms. The Release notes that persons will need the same codes that are required to file on EDGAR today. The Release also states that the Commission plans to announce the technical filing requirements sufficiently before the new system’s implementation to provide adequate preparation time. Dorothy M. Donohue Associate Counsel