

MEMO# 18786

April 18, 2005

PROPOSED CHANGES TO COMPOSITION OF THE BOARD OF GOVERNORS

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18786] April 18, 2005 TO: BOARD OF GOVERNORS No. 16-05 RE: PROPOSED CHANGES TO COMPOSITION OF THE BOARD OF GOVERNORS The FY 2005 Nominating Committee¹ met on Wednesday, February 2, 2005 in Phoenix, Arizona to consider nominees to fill an open position on the Board of Governors and to the class of 2008. A proposed slate of candidates will be presented to the Board for approval at its May 5th meeting. In addition, the Committee discussed two changes to the Nominating Committee guidelines. The first guideline, related to the experience of nominees, has developed over the years based on decisions by the Board of Governors and the Executive Committee. The second guideline, related to Closed-End Fund and Unit Investment Trust representation on the Board, is a By-Law requirement. As described below, the Nominating Committee recommends changes to both guidelines. These recommendations are being sent to the Board separately from other meeting material in order to allow you additional time to consider the recommendations. If you have any questions regarding these recommendations please contact me, Paul Stevens or Larry Maffia. Experience of Nominees: Nominating Committee guidelines have long expressed a preference that senior executives be nominated for Board service to ensure that Board deliberations consider the full range of issues associated with any policy decision and that, once a decision is made, member firms are committed to implementing it. In 1991, the Executive Committee adopted a guideline that directed the Committee to seek CEO's or senior decision-makers as Governors. In light of the increased complexity of member organizations, the CEO may not always be the active senior mutual fund executive. Previous Nominating Committee members have suggested that the Executive Committee's 1991 guidance be expanded to recognize this fact. The evolution of fund 1 Other members of the FY 2005 Nominating Committee include John D. DesPrez, III, Dawn-Marie Driscoll, Stephen H. Hopkins, John V. Murphy, Thomas O. Putnam, Patricia K. Woolf and James S. Riepe (ex-officio). 2 governance practices also suggests that the 1991 guidance be refined. The Committee discussed these issues and recommends the Board approve the following as a guideline for Committee decision making: "In selecting nominees for the Board of Governors, the Nominating Committee is to seek knowledgeable, experienced candidates who are actively engaged in the mutual fund business as either (i) the CEO/senior decision-maker of the investment adviser to a member mutual fund complex, or (ii) an independent director of a member mutual fund. With regard to independent director candidates, preference should be given to those directors who are active in the leadership of their fund boards." Closed-End Fund and Unit Investment Trust Representation: Nominating Committees have always sought to maintain a balance on the Board of the many segments

of the investment company industry. In particular, the Nominating Committee evaluates the demographics of the Board based on method of distribution, geography, parent company affiliation and size. One unique representational requirement that is also considered results from Article VII of the Institute's By-Laws that specifies "... of the forty-six (46) Governors, at least two shall be an officer, director or partner of a member of the unit investment trust division of the corporation, and at least three shall be an officer, director, partner or trustee of a member of the closed-end investment company division of the corporation." These requirements are quite old, dating back to the time when closed-end funds and UITs first joined the Institute. While the industry clearly has evolved, the By-Laws have not been amended to provide designated Board representation for other product types (e.g., ETFs, insurance products, etc.). Moreover, changes in the market impacting the UIT structure have reduced this category of membership. At the present time there are only five remaining UIT members, one of which is no longer forming new trusts. In light of the decline in this segment of the industry, complying with the By-Law requirement that at least two Governors be representatives of the UIT division will be difficult in FY 2006. By contrast, the closed-end fund requirement is easily met. At the present time, seventeen closed-end members are represented on the Board of Governors. The Committee discussed the appropriateness of continuing to allocate a specific number of seats to certain product types and not to others. The Committee concluded that the By-Laws should be amended to eliminate these provisions. The Board of Governors has the authority to amend any section of the By-Laws except for the dues schedule, which can only be changed by a vote of the membership. Attached is the proposed new wording of the By-Laws. Paul G. Haaga, Jr. Chairman, Nominating Committee Attachment Attachment 1 Proposed Wording of ARTICLE VII – Board of Governors Section 2. The Board of Governors shall be composed of forty-six (46) members, forty-five (45) of whom shall be elected by the members of the corporation. The immediate past Chairman of the Board of Governors of the corporation shall serve as the forty-sixth Governor. Twenty-three Governors shall be officers, directors, partners or trustees of members of the open-end investment company division of the corporation, three Governors shall be officers, directors, partners or trustees of the closed-end investment company division of the corporation and two Governors shall be officers, directors or partners of members of the unit investment trust division of the corporation. All other Governors shall be officers, directors, partners or trustees of members of the corporation. The Board of Governors may from time to time prescribe qualifications for its members, in addition to those set forth in this Article, so that the Board is reflective of the members of the corporation. The Governors, other than the immediate past Chairman of the Board of Governors, shall be divided into three (3) classes, each class to consist of fifteen (15) Governors. Of the forty-six (46) Governors, at least two shall be an officer, director or partner of a member of the unit investment trust division of the corporation, and at least three shall be an officer, director, partner or trustee of a member of the closed-end investment company division of the corporation. At each annual meeting, fifteen (15) Governors shall be elected for a term of three (3) years. Each Governor elected by the members of the corporation shall hold office until his successor is elected and qualified. The immediate past Chairman of the Board of Governors shall hold office during the term(s) of his successor as Chairman.