

MEMO# 14657

April 19, 2002

NYSE PROPOSED RULE CHANGE RELATING TO CLOSED-END FUND LISTING ELIGIBILITY CRITERIA AND ALLOCATION POLICIES

[14657] April 19, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 17-02 RE: NYSE PROPOSED RULE CHANGE RELATING TO CLOSED-END FUND LISTING ELIGIBILITY CRITERIA AND ALLOCATION POLICIES The Securities and Exchange Commission has published for comment, and granted partial accelerated approval to, a proposed rule change filed by the New York Stock Exchange¹ instituting a three-month pilot program relating to the listing eligibility criteria and allocation policy for registered closed-end funds. The pilot program is scheduled to end on July 5, 2002 (or at such earlier time if the SEC grants the NYSE's request for permanent approval of the pilot). Listing Eligibility Criteria The proposed rule change would amend the NYSE's Listed Company Manual to apply to all individual closed-end funds the \$60 million net asset test currently used for funds applying in connection with their initial public offering.² Presently, funds with three or more years of operating history must meet the financial standards applicable to regular operating companies, in contrast to newly formed funds, which may be listed based only on raising at least \$60 million in net assets. The Proposal states that the NYSE has determined that this distinction between existing and newly formed funds no longer serves any desired business or other purpose. The proposed rule change also would establish a standard under which a group of funds meeting certain specified requirements can be listed concurrently by a single "fund family," even if one or more of the funds did not satisfy the \$60 million test.³ In particular, the 1 Securities Exchange Act Release No. 45684 (April 2, 2002), 67 FR 17092 (April 9, 2002) ("Proposal"). 2 Current NYSE rules require that a newly organized fund have \$60 million in "net assets." The NYSE proposes to instead use the term "market value of publicly held shares," but represents that there is no substantive change involved in this different terminology. The Proposal states that, in the case of any IPO, whether of a business company or a fund, the NYSE has always looked at whether the offering has raised \$60 million and that is what the NYSE will continue to do under the proposed rule amendments. 3 The Proposal states that the term "fund family" consists of funds with a common investment adviser or having investment advisers which are all affiliates of one another. 2 total group market value of publicly held shares (offering proceeds, in the case of newly formed funds) must equal in the aggregate at least \$200 million; each group must average a minimum of \$45 million in market value of publicly held shares (proceeds) per fund; and no single fund in the group can have a market value of publicly held shares (proceeds) less than \$30 million. This group standard would apply regardless of whether the group consists of newly formed or existing funds, or a combination thereof.⁴ Allocation

Policies The proposed rule change would amend the NYSE's Allocation Policy and Procedures ("Allocation Policy") with respect to the specialist allocation of funds listed in a fund family. In particular, the amended Allocation Policy would provide that the NYSE's Allocation Committee should generally allocate to one specialist unit all the closed-end funds in a fund family listed under the listing eligibility criteria discussed above. The Proposal states, however, that in certain situations the Allocation Committee would be permitted to allocate funds within a group to more than one unit. Such situations could include instances where the number of funds in the group, the types of funds, or the relative values of the funds suggest to the Allocation Committee that allocation to more than one specialist unit would be appropriate. The Proposal also states that all the other aspects of the Allocation Policy, including the method by which the listed company is permitted to pick from a panel of specialists put together by the Allocation Committee, will apply. Comments on the Proposal are due to the SEC no later than April 30, 2002. If you have any questions or comments on the Proposal, please contact the undersigned by phone at 202-371-5408, by fax at 202-326-5839, or by e-mail at aburstein@ici.org. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format) 4 Once a group of closed-end funds is listed under the proposed standards, each fund in the group will be individually subject to the Exchange's continued listing criteria applicable to funds specified in the NYSE's Listed Company Manual.