

MEMO# 17884

August 23, 2004

SEC STAFF GUIDANCE ON FORM N-PX

[17884] August 23, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 57-04 COMPLIANCE ADVISORY COMMITTEE No. 82-04 SEC RULES MEMBERS No. 118-04 SMALL FUNDS MEMBERS No. 90-04 RE: SEC STAFF GUIDANCE ON FORM N-PX The Institute has received informal guidance from the staff of the SEC's Division of Investment Management on several issues regarding Form N-PX. The staff's guidance is set forth below.

- 1. Fund Mergers.** According to the SEC staff, the proxy voting record of a fund that has been merged out of existence (including funds that have de-registered) should be disclosed. Generally, the non-surviving fund should disclose its voting record by filing its own Form N-PX, using its own file number and CIK number, before it deregisters. Funds that have already de-registered also should file their own Form N-PX. The SEC staff also stated that the voting record of the non-surviving fund may be disclosed on the Form N-PX of the surviving fund, with the non-surviving fund's proxy votes presented in a separate category. It is the staff's position, however, that, if a non-surviving fund chooses to include its proxy votes on the surviving fund's Form N-PX, the non-surviving fund should file a separate Form N-PX that provides a cross-reference to the surviving fund's Form N-PX. The cross-reference should provide information that would enable an investor to locate the surviving fund's Form N-PX, including the name of the surviving fund, its CIK number, its file number, and the filing date. Funds that merge out of existence prior to the end of the reporting period (June 30th) may file before the end of the reporting period but must include the actual end date of the reporting period (e.g., merger date) on the form. (EDGAR will not accept forms dated June 30th prior to June 30th.)
- 2. Master-Feeder Funds.** According to the SEC staff, a feeder fund can provide a cross-reference on its Form N-PX indicating that the feeder fund holds shares of the master fund and that the proxy voting record of the master fund can be found on its own Form N-PX. As in the case of merged funds, the cross-reference should include information that would enable investors to locate Form N-PX filed by the master fund and should include the name of the master fund, its CIK number, its file number, and the filing date. In the alternative, a feeder fund can choose to file the proxy voting record of the master fund (i.e., the duplicate voting record of the master fund). Master funds registered under the Investment Company Act of 1940, but not under the Securities Act of 1933, would need to file their own Form N-PX.
- 3. Funds of Funds.** Funds of funds must file on Form N-PX any proxy votes with respect to the underlying fund and not the proxy votes cast with respect to the portfolio securities of the underlying fund.
- 4. Filing through EDGAR on August 31, 2004.** According to the SEC staff, the EDGAR system was designed to handle peak filing volume. If a member experiences any technical difficulties in filing through EDGAR, the member should contact EDGAR Filer Support at (202) 942-8900.
- 5. Disclosure of Fiscal Year of Registrant.** The SEC staff would not object if funds, including different series of a series fund that have different fiscal year ends, omit the disclosure of the fiscal year of the registrant.

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