

MEMO# 6740

March 9, 1995

SEC STAFF ALLOWS FOR DELIVERY OF PROSPECTUSES IN AN ELECTRONIC FORMAT

March 9, 1995 TO: DIRECT MARKETING COMMITTEE No. 17-95 SALES FORCE MARKETING COMMITTEE No. 17-95 SHAREHOLDER COMMUNICATIONS COMMITTEE No. 14-95 RE: SEC STAFF ALLOWS FOR DELIVERY OF PROSPECTUSES IN AN ELECTRONIC FORMAT

The Division of Corporation Finance recently issued a no-action letter expressing the view that the term "prospectus" as defined and used in the Securities Act of 1933 includes a prospectus that is encoded in an electronic format (an "electronic prospectus"). Accordingly, compliance with the Acts prospectus delivery requirements may be achieved by using an electronic prospectus, so long as certain conditions are met. A copy of the letter, Brown & Wood (pub. avail. February 17, 1995), is attached. In the letter, the staff addressed the issue of whether underwriters of securities or dealers may comply with the prospectus delivery requirements of the Securities Act by downloading into a computer the complete text of a prospectus and making the prospectus available to customers through proprietary or "common carrier" deliver systems. In reaching its position, the staff noted a number of conditions that should be followed when an electronic prospectus is used, including the disclosure of the same information for the electronic and the paper prospectus, the establishment of procedures to provide investors with an election to receive a prospectus (or future prospectuses) in electronic form, the notification to investors who have elected to receive an electronic prospectus of its availability, and the continuous accessibility without charge of the prospectus through the designated electronic system. Finally, the staff specifically noted that investment companies should consider including in any application for the purchase of shares that is based on an electronically transmitted prospectus, an "item to be completed by the investor confirming that a prospectus has been sent or given to the investor electronically." If the item is answered negatively by the purchaser, the investment company should immediately send a paper prospectus to the investor. Alexander C. Gavis Assistant Counsel Attachment