

MEMO# 10976

May 12, 1999

SEC APPROVES NYSE CLOSED-END FUND LISTING ELIGIBILITY CRITERIA

1 Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999). See Memorandum to Closed-End Investment Company Committee No. 4-99, dated February 8, 1999. 2 Securities Exchange Act Release No. 41346 (April 29, 1999), 64 FR 24435 (May 6, 1999). [10976] May 12, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 16-99 RE: SEC APPROVES NYSE CLOSED-END FUND LISTING ELIGIBILITY CRITERIA

As you know, the Securities and Exchange Commission ("SEC") published for comment, and at the same time granted accelerated approval to a portion of, a proposed rule change filed by the New York Stock Exchange ("NYSE").¹ The proposed rule change instituted a pilot program amending the NYSE's Listed Company Manual to codify its policy regarding the listing of newly organized closed-end funds. The pilot program was set to expire on April 29, 1999, or at an earlier time if the SEC approved the NYSE's request for permanent approval of the program before that date. On April 21, 1999, the NYSE submitted Amendment No. 1 to the proposed rule change. On April 29, 1999, the SEC published an order (attached) approving the proposed rule change, as amended, and at the same time requested comment on Amendment No. 1.² Under the NYSE's new listing eligibility criteria, if a fund has at least \$60 million in net assets, as evidenced by a firm underwriting commitment, the NYSE will generally authorize the listing of the fund. The NYSE noted that this requirement is the minimum net asset requirement for listing. The NYSE retains the discretion to deny listing to a fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the fund will be able to maintain its financial status. Any fund with less than \$60 million in net assets will not be considered for listing. Funds also will be subject to continued financial listing criteria, as are all NYSE-listed companies. Therefore, the NYSE stated that if a fund is identified in an exception report listing companies below the NYSE's continued listing standards, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company identified in a report.

Amendment No. 1 proposes an exception to the firm underwriting commitment required as evidence of a fund's net assets. The NYSE stated that because spin-offs and carve-outs are not the subjects of an underwriting, an applicant fund therefore will be unable to submit the requisite undertaking letter. Accordingly, under Amendment No. 1, an applicant fund which is a spin-off or carve-out must show that the new entity will satisfy the net assets test by submitting to the NYSE a letter from its parent company's investment banker or other financial advisor.³ See Memorandum to Closed-End Investment Company Committee No. 9-99, dated February 25, 1999. In its order approving the proposed rule change, the SEC stated that it carefully considered the concerns expressed by the Institute in its comment letter opposing the proposal.³ Ultimately, however, the SEC stated that it concluded that the net asset requirement codified by the NYSE in the proposal is a clear, nondiscriminatory

standard that should promote transparency with respect to the NYSE listing standards for funds. The SEC also stated that it believes that the proposed standard should promote certainty and reduce costs in the listing process which should benefit investors and other market participants. The SEC also stated that the NYSE responded to the Institute's comment letter opposing the proposal. Among other things, the NYSE argued that the proposed rule change is merely a codification of an existing practice at the NYSE that has evolved over time as a way to assess the financial viability of a newly organized closed-end fund. The NYSE also stated that grandfather provisions are not necessary under the newly codified net asset requirement because the \$60 million net asset requirement is the minimum requirement imposed. The NYSE noted, however, that it is developing specific standards to judge a fund for continued listing status. Comments on Amendment No. 1 are due to the SEC no later than May 27, 1999. If you have any comments on Amendment No. 1, please provide them to Ari Burstein by phone at (202) 371- 5408, by fax at (202) 326-5841, or by e-mail at aburstein@ici.org no later than May 21. Ari Burstein Assistant Counsel Attachment

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