MEMO# 4073

September 3, 1992

INSTITUTE LETTER ON PROPOSED PROXY REFORM AND EXECUTIVE COMPENSATION DISCLOSURE AMENDMENTS

September 3, 1992 TO: SEC RULES COMMITTEE NO. 68-92 INVESTMENT ISSUES COMMITTEE NO. 11-92 CLOSED-END FUND COMMITTEE NO. 19-92 RE: INSTITUTE LETTERS ON PROPOSED PROXY REFORM AND EXECUTIVE COMPENSATION DISCLOSURE AMENDMENTS ____ As we previously informed you, the Securities and Exchange Commission issued for public comment a revised proposal to amend the proxy rules under the Securities Exchange Act of 1934 and a proposal to enhance proxy disclosure of executive compensation. (See Memorandum to SEC Rules Committee No. 44-92, Investment Issues Committee No. 9-92 and Closed-End Fund Committee No. 12- 92, dated July 7, 1992). The Institute filed the attached letters on the proposal with the SEC earlier this week. Set forth below is a summary of the Institute's comments on these proposals. Proxy Reform Amendments The Institute's comment letter on the proxy reform proposal expressed strong support for the revised proposed amendments to Rule 14a-7 under the 1934 Act, which would allow registrants to continue to have discretion to mail soliciting materials on behalf of a requesting shareholder, rather than provide a shareholder list, as originally proposed. However, we recommended that two of the requirements that would be imposed upon registrants who elect to do the mailing be modified. First, the Institute recommended that instead of requiring such registrants to provide the requesting shareholder certain information with respect to the number of shareholders and costs of mailing within two business days after receipt of the request, the information be provided within five business days after the registrant has advised the shareholder of its election. Second, the Institute recommended that registrants who elect to mail a shareholder's materials in lieu of providing a shareholder list be exempt from the proposed requirement to disclose information in the proxy statement relating to the registrant's denial of the shareholder's request. In addition, the Institute opposed the proposal to allow shareholders in specified circumstances to require management to include in its annual proxy statement relating to the election of directors a statement expressing shareholders' views on the long- term performance of the company, its management and the board of directors on the grounds that (1) the proxy process is not the appropriate forum for shareholder grievances, (2) the usefulness of those statements are questionable,and (3) including those statements would increase the costs of preparing, printing and mailing proxy materials, which would be inconsistent with the Commission's overall objective of reducing the costs of compliance with the proxy rules. Executive Compensation Disclosure Amendments The Institute's comments on the proposed amendments to the executive compensation disclosure requirements were limited to the proposed performance presentation requirement, which would require registrants to provide a line graph in the form prescribed comparing cumulative total shareholder return with the S&P 500 Stock Index and either a nationally recognized industry index or a registrant-constructed peer group index over a minimum term of five years. The Institute strongly opposed the performance presentation requirement. First, the Institute asserted that the proposed requirement for funds to compare their performance the S&P 500 Index would be entirely inappropriate for most funds. Even in the case of funds that invest in securities similar to those that constitute that Index, such a comparison would be inappropriate since fund performance takes into account expenses incurred by the fund and open-end funds must maintain a portion of their portfolios in liquid assets to meet redemption requests. Second, we noted that there was an even more fundamental reason why this requirement would be inappropriate for the vast majority of open-end and closed-end funds -- most funds are externally managed by the fund’s investment adviser. As a consequence, the performance information about the fund would serve no purpose, since it is intended to complement the discussion in the proxy statement concerning executive compensation paid by the registrant to its officers. Moreover, most funds do not include this information since their employees are compensated by the adviser, not the fund. We will keep you informed of developments on these proposals. Amy B.R. Lancellotta Associate Counsel Attachments