

**MEMO# 14375**

January 18, 2002

# **INSTITUTE COMMENT LETTER ON SEC PROPOSAL TO AMEND RULE 17A-8 UNDER THE INVESTMENT COMPANY ACT OF 1940**

[14375] January 18, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 5-02 SEC RULES COMMITTEE No. 7-02 RE: INSTITUTE COMMENT LETTER ON SEC PROPOSAL TO AMEND RULE 17a-8 UNDER THE INVESTMENT COMPANY ACT OF 1940 The Institute has filed a comment letter with the Securities and Exchange Commission regarding the Commission's proposal to amend Rule 17a-8 under the Investment Company Act of 1940, the rule that permits affiliated fund mergers. A copy of the Institute's letter is attached, and it is substantially similar to the draft letter sent to you previously.<sup>1</sup> The Institute's letter generally supports the Commission's proposal, but recommends several modifications to ensure that it achieves its intended goal of reducing burdens on funds while preserving important shareholder protections. In summary, the Institute's letter: -- opposes the Commission's proposal to codify in the rule the factors that boards should consider in determining that a fund merger is in the best interests of shareholders; instead, the letter recommends that the factors be set forth in the adopting release; -- supports the proposed shareholder approval requirement, but only in circumstances where the terms of the merger would have a material effect on shareholders' interests; -- opposes the proposed echo voting requirement as it is unnecessary given the other protections provided by the rule; -- supports the Commission's proposal to expand the rule to permit mergers between funds and unregistered entities, but opposes the proposed pricing provision (including the independent evaluator requirement) and recommends instead that the registered fund utilize its pricing procedures to value the assets of the unregistered entity; <sup>1</sup> See Memorandum to SEC Rules Committee No. 99-01 and Closed-End Investment Company Committee No. 25-01, dated December 21, 2001. <sup>2</sup> -- recommends expanding the proposal to permit mergers involving other unregistered entities, such as insurance company separate accounts, among others; and -- opposes the Commission's proposal to add a provision to the rule prohibiting certain transactions that would be prohibited under Section 17(a) of the Investment Company Act inasmuch as it would be redundant of Section 48(a) of the Act. Barry E. Simmons Associate Counsel Attachment (in .pdf format)