

MEMO# 14274

December 21, 2001

INSTITUTE DRAFT COMMENT LETTER ON SEC PROPOSED AMENDMENTS TO RULE 17A-8 UNDER THE INVESTMENT COMPANY ACT

[14274] December 21, 2001 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 25-01 SEC RULES COMMITTEE No. 99-01 RE: INSTITUTE DRAFT COMMENT LETTER ON SEC PROPOSED AMENDMENTS TO RULE 17a-8 UNDER THE INVESTMENT COMPANY ACT As we previously informed you, the Securities and Exchange Commission has issued a proposal to amend Rule 17a-8 under the Investment Company Act of 1940, the rule that permits mergers and other business combinations between affiliated investment companies.¹ The Institute has prepared a draft comment letter (attached) on the proposal. Comments on the proposed amendments are due to the SEC by January 18, 2002. Please provide any comments you may have to Barry Simmons at 202/326-5923 (phone), 202/326-5827 (fax), or bsimmons@ici.org (email), no later than Wednesday, January 9, 2002. The Institute's draft letter generally supports the proposal, but provides several comments to ensure that the proposal achieves its intended goal of reducing burdens on funds while preserving important shareholder protections. In summary, the Institute's draft 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 draft 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 significant effect on shareholders' interests. -- opposes the proposed echo voting requirement as it is unnecessary given the other protections provided by the rule. 1 See Memorandum to SEC Rules Committee No. 90-01 and Closed-End Investment Company Committee No. 20-01, dated November 13, 2001. 2 -- 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 requirement for an independent evaluator) and recommends instead that the registered fund utilize its pricing procedures to value the assets of the unregistered entity. -- recommends expanding the proposal to permit mergers involving other unregistered entities, such as insurance company separate accounts, among others. -- 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)

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