

**MEMO# 3911**

July 7, 1992

# **SEC REPROPOSES PROXY REFORM AMENDMENTS AND PROPOSES EXECUTIVE COMPENSATION AMENDMENTS**

July 7, 1992 TO: SEC RULES COMMITTEE NO. 44-92 INVESTMENT ISSUES COMMITTEE NO. 9-92 INVESTMENT ADVISERS COMMITTEE NO. 28-92 CLOSED-END FUND COMMITTEE NO. 12-92 RE: SEC REPROPOSES PROXY REFORM AMENDMENTS AND PROPOSES EXECUTIVE COMPENSATION AMENDMENTS

The Securities and Exchange Commission has 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. A copy of the SEC releases are attached. A brief summary of the proposals is set forth below. Proxy Rules As you may recall, last year the SEC proposed amendments to the proxy rules under the Exchange Act. (See Memorandum to SEC Rules Committee No. 35-91, Investment Issues Committee No. 4-91, Investment Advisers Committee No. 25-91 and Closed-End Fund Committee No. 14-91, dated June 19, 1991.) In response to the over 900 comment letters received by the SEC, the SEC revised the proposal and reissued it for public comment. The Institute's comment letter on the initial proposal focused on that part of the proposal that would have allowed securityholders open access to shareholder lists for purposes of making solicitations. The Institute opposed the application of this amendment to mutual funds on the grounds that mutual fund shareholders differ in many important respects from stockholders of publicly traded securities. (See Memorandum to SEC Rules Committee No. 60-91, Investment Issues Committee No. 16-91, Investment Adviser Committee No. 49-91 and Closed-End Committee No. 24-91, dated September 24, 1991). As repropoed by the SEC, registrants would remain able to elect to mail soliciting materials, rather than provide a list of shareholders, except in the case of roll-ups and going private transactions. Under the repropoed rules, if a shareholder list is provided to a soliciting shareholder, the shareholder would have to certify that the list will be used only for solicitation purposes. If the company denies access to the shareholder list, it would have to disclose the denial in its proxy statement. Other aspects of the repropoed amendments to the proxy rules generally would: 1. permit shareholders and other persons to exchange views or comment on a proxy solicitation undertaken by a registrant, or any other person, without having to file with the SEC or deliver a proxy statement to solicited shareholders, so long as public notice of extensive soliciting activity is provided in the manner described in the proposal; 2. eliminate SEC preclearance of all soliciting material other than the proxy statement and form of proxy; and 3. make all soliciting material filed in preliminary form public immediately upon filing, except that confidential treatment would be afforded in certain

limited circumstances. Executive Compensation The executive compensation proposal would significantly revise the SEC's rules governing disclosure of executive compensation. The proposal is intended to "consolidate the requisite disclosure in a series of tables that would set forth in a clear and understandable manner each element of compensation paid, earned or awarded in a given year." The proposal also would require the compensation committee to report on the factors on which it based its compensation decisions. With respect to the executives whose compensation must be disclosed, the SEC release states that it does not propose to alter the range of executives subject to individual disclosure of executive compensation or to modify the executive group reporting requirement (which is described in Item 402 of Reg. S-K), except as necessary to assure inclusion of the CEO or other person serving in this capacity. However, the proposal will raise the present disclosure threshold of \$60,000 annual compensation with respect to individual executive officers, other than the CEO, to \$100,000. Comment Period The comment periods for the proxy reform and executive compensation disclosure proposals expire on August 31, 1992. Please provide me with your comments by August 10, 1992. My direct number is 202/955-3523. Amy B.R. Lancellotta Associate Counsel Attachment

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