

**MEMO# 19258**

October 17, 2005

## **SEC APPROVES NYSE INTERPRETATION OF RULE 452 REQUIRING BENEFICIAL SHAREHOLDER APPROVAL OF NEW ADVISORY CONTRACTS**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19258] October 17, 2005 TO: SEC RULES COMMITTEE No. 56-05 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 36-05 RE: SEC APPROVES NYSE INTERPRETATION OF RULE 452 REQUIRING BENEFICIAL SHAREHOLDER APPROVAL OF NEW ADVISORY CONTRACTS The Securities and Exchange Commission has approved a New York Stock Exchange proposal to interpret NYSE Rule 452 so that a broker-dealer may not vote uninstructed shares on any proposal for shareholder approval of an investment company's advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940.<sup>1</sup> The interpretation became effective upon its filing on September 2, 2005. Comments on the interpretation are due to the Commission no later than November 4, 2005.<sup>2</sup> If there are issues that you would like the Institute to consider including in a comment letter on the proposal, please contact me by phone at 202. 218-3563 or email at [ddonohue@ici.org](mailto:ddonohue@ici.org). Rule 452 provides that a broker-dealer may vote shares registered in its name, even if the beneficial shareholder does not give voting instructions, provided that the proposal being voted on does not involve a matter that "may affect substantially the rights or privileges of such stock." The NYSE, following discussions with the staff of the SEC's Division of Investment Management, has determined that any proposal to obtain shareholder approval of an investment company's advisory contract with a new investment adviser, which approval is required by the Investment Company Act, will be deemed a matter which "may affect substantially the rights or privileges of such stock" for purposes of Rule 452. Consequently, for example, a broker-dealer may not vote shares on any proposal to obtain shareholder approval <sup>1</sup> See SEC Release No. 34-52569 (October 6, 2005), [70 FR 60118 (October 14, 2005)] ("Release"). <sup>2</sup> The Commission has the authority to abrogate the interpretation within 60 days of its filing if it believes that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Securities Exchange Act of 1934. The Release states that September 28, 2005, the date on which the NYSE submitted Amendment No. 2, should be used for purposes of calculating the 60-day period within which the Commission could abrogate the interpretation. <sup>2</sup> of a new advisory contract due to an assignment of the contract, including an assignment caused by a change in control of the investment adviser that is party to the contract. Dorothy M. Donohue Associate Counsel

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