

**MEMO# 9071**

July 16, 1997

## **SEC PROPOSES AMENDMENTS TO RULE 24F-2 TO IMPLEMENT A PROVISION OF THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996**

\* See Investment Company Act Release No. 22747 (July 14, 1997) ("Release"). July 16, 1997  
TO: SEC RULES COMMITTEE No. 71-97 ACCOUNTING/TREASURERS COMMITTEE No. 19-97  
UNIT INVESTMENT TRUST COMMITTEE No. 47-97 RE: SEC PROPOSES AMENDMENTS TO  
RULE 24f-2 TO IMPLEMENT A PROVISION OF THE NATIONAL SECURITIES MARKETS  
IMPROVEMENT ACT OF 1996

The Securities and Exchange Commission has proposed amendments to several rules and forms, including rule 24f-2 and Form 24F-2 under the Investment Company Act of 1940.\* The proposed amendments are designed to implement a provision of the National Securities Markets Improvement Act of 1996 ("Improvement Act") that amended sections 24(e) and 24(f) of the Investment Company Act to simplify the current system for registering investment company securities. The proposed amendments to rule 24f-2 and Form 24F-2 would streamline the rule and form to make them consistent with amended section 24. The Commission also is proposing to rescind two rules under the Investment Company Act relating to the registration of fund securities that will no longer be necessary when the amendments to section 24 become effective. The proposed amendments are summarized below, and a copy of the Release is attached. Comments on the proposed amendments must be filed with the Commission by August 18, 1997. Please provide me with any comments on the proposal by phone at 202/326- 5821, fax at 202/326-5827, or e-mail at donohue@ici.org by July 31, 1997. Please pay particular attention to the proposed amendments to Form 24F-2. It is important that we provide the Commission with any technical comments regarding the form at this time to help ensure a smooth transition to the new registration system.

I. National Securities Markets Improvement Act of 1996

The Improvement Act amended sections 24(e) and 24(f) of the Investment Company Act to create a new, simpler system for the registration of investment company securities. The amendments become effective on the earlier of October 11, 1997 or the effective date of Commission rulemaking implementing amended section 24(f). Amended section 24(f), when effective, will provide that a fund will be deemed to have registered an indefinite amount of securities upon the effective date of its registration statement. The fund then will be required to pay a fee within 90 days after the end of each of its fiscal years based upon the aggregate sale price of fund shares sold during that fiscal year reduced by (i) the aggregate redemption price of shares redeemed during that year and (ii) the aggregate redemption price of shares redeemed during any prior fiscal year ending on or after

October 11, 1995 that were not used previously by the fund to reduce its registration fees. Section 24(f) will provide the exclusive means for registering fund securities. The amendments also will replace the current provisions for late payment of registration fees with an interest payment requirement. A fund will not be deemed to have sold unregistered securities or lose the ability to net sales against redemptions solely because its registration fee was paid late. Instead, to compensate the U.S. Treasury for any delay in the receipt of revenues based on a late payment of registration fees, amended section 24(f) will require the fund to pay interest charges on late payments.

II. Rule 24f-2 Amendments

A. Form Filing Requirements The rule, as proposed to be amended, would require a fund to file a Form 24F-2 within 90 days after the end of each of its fiscal years. The amended rule also would specify that any fund that pays the fee more than 90 days after the end of its fiscal year will be required to pay interest. The proposed amendments would eliminate the provision in current rule 24f-2 that a Form 24F-2 is deemed timely filed, regardless of when it reaches the Commission, if the fund establishes that it timely transmitted the form to a third party that guaranteed delivery no later than the filing date. The Release states that this provision is inconsistent with one of the reasons for the interest payment requirement in amended section 24(f) -- to compensate the U.S. Treasury for any delay in the timely receipt of revenue. The amendments also would eliminate the requirement in current rule 24f-2 that a fund's Form 24F-2 be accompanied by an opinion of counsel stating that the securities which Form 24F-2 "makes definite" were legally issued, fully paid, and non-assessable. The Release explains that the opinion requirement no longer seems necessary in light of amended section 24(f) providing for the registration of an indefinite number of securities in all cases. The Commission requested comment on the general approach of the proposed amendments, whether any provisions that would be eliminated from the rule should be retained, and whether the opinion requirement should be retained in order to provide additional assurance that a fund's securities are legally issued.

B. Fund Mergers and Reorganizations Like the current rule, the amended rule would specify that the date on which a fund ceases operations would be deemed to be the end of the fund's fiscal year. As under the current rule, a fund that ceases operations because it is merged into an operating fund would file a Form 24F-2 with respect to its final fiscal year. The acquiring fund would not assume the redemption credits of the acquired fund to reduce its registration fee. Current rule 24f-2 provides an exception to this provision for certain reorganizations. The proposed amendments would retain these exceptions but simplify them by deleting the references to rules 414 and 18f-2. The proposed amendments also would clarify that the reorganization exceptions are not available in transactions designed to result in the predecessor fund merging with a fund that was not a shell prior to the merger.

III. Form 24F-2 Amendments The proposed amendments to Form 24F-2 reflect the changes made by the Improvement Act. As proposed to be amended, Form 24F-2 would consist of 8 items and instructions for completing and filing the form. The proposed items include identifying information about the fund, a worksheet for calculating the registration fee, and provisions regarding paying the fee and any interest that may be due (including requiring the fund to indicate whether the form was being filed late). The proposed worksheet would call for fund sales information, redemption information, registration fee calculation, and interest and other payment information. Unlike the current form, the amended form would not require information about securities registered other than pursuant to rule 24f-2 (i.e., securities registered pursuant to rule 24e-2). The Release states that this information is not directly relevant to the calculation of the registration fee; rather, the items currently requiring this information were designed to assist funds in determining that all of their securities were registered. The Release also notes that the need to determine this information will be substantially reduced as funds sell shares that were previously registered. The Commission requested comment on whether the form should

continue to require this information to assist fund compliance personnel in determining whether securities sold by the fund have been appropriately registered. The Release notes that section 24(f)(2), as amended, will require that a fund calculate its registration fee based only on the number of securities sold during the fiscal year pursuant to an indefinite registration of securities under section 24(f). It explains that in this way, section 24(f) will avoid imposing a fee on securities that were registered pursuant to section 24(e) prior to the effective date of the section 24(f) amendments and on which a registration fee already has been paid. The Commission requested comment on whether the form as proposed to be amended would assist funds in calculating their registration fees, whether any additional information should be required or whether any of the information proposed to be required is unnecessary, and whether the proposed form instructions adequately address the procedures for completing and filing the form. IV. Conforming Amendments 4The Improvement Act will, when effective, eliminate the provisions of the Investment Company Act that relate to the registration of fund securities by post-effective amendment. As a result of those changes, rule 24e-2, the rule that addresses the computation of fees on securities registered by post-effective amendment, will be extraneous, and the Commission proposed rescinding that rule. Similarly, because the Improvement Act will eliminate the provision of section 24(f) of the Investment Company Act that allows for post-sale registration, the Commission proposed to rescind rule 24f-1, which details the procedures for post-sale registration. The Commission also proposed amending several Investment Company Act forms to delete or conform them to amended section 24(f). Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)