

MEMO# 7553

January 15, 1996

SEC PROPOSES ELIMINATING INITIAL SHAREHOLDER APPROVAL OF RULE 12B-1 PLANS

1 See Memorandum to SEC Rules Committee No. 83-95, dated July 20, 1995. The Division of Investment Management also had recommended this change in its 1992 report, "Protecting Investors: A Half Century of Investment Company Regulation." 2 SEC Release No. IC-21660 (January 5, 1996). January 15, 1996 TO: SEC RULES COMMITTEE No. 1-96 RE: SEC PROPOSES ELIMINATING INITIAL SHAREHOLDER APPROVAL OF RULE 12b-1 PLANS

The Securities and Exchange Commission recently issued a proposal to amend Rule 12b-1 under the Investment Company Act to eliminate the requirement for shareholder approval of a Rule 12b-1 distribution plan adopted by a mutual fund before a public offering of the funds shares. The Institute recommended this change in its July 1995 submission to the Division of Investment Management entitled "Proposals to Improve Investment Company Regulation."¹ A copy of the SECs proposing release² is attached. The proposing release states that the shareholder approval requirement is unnecessary when a 12b-1 plan is adopted before a fund's initial public offering because typically the only shareholders at that point are persons involved in organizing the fund and their approval of the plan is virtually automatic. The release further indicates that when public investors purchase shares of the fund, they 'vote with their dollars' to accept the fund's 12b-1 plan as described in the prospectus. Finally, the release notes that existing requirements, including that a fund's directors approve the 12b-1 plan and that shareholders approve any material increase in the fee paid thereunder, adequately protect fund shareholders. Comments on the proposal must be filed by February 22, 1996. If there are any matters you would like the Institute to consider addressing in its comment letter, please contact me at (202) 326-5822 (or by fax at (202) 326-5827) by Wednesday, February 7. Frances M. Stadler Associate Counsel Attachment

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