

MEMO# 8756

March 26, 1997

INSTITUTE COMMENT LETTER ON SEC PLAIN ENGLISH PROPOSAL

* See Memorandum to Closed-End Investment Company Committee No. 1-97, SEC Rules Committee No. 7-97 and Unit Investment Trust Committee No. 2-97, dated January 16, 1997 (proposal) and Memorandum to Closed-End Investment Company Committee No. 8-97, SEC Rules Committee No. 28-97 and Unit Investment Trust Committee No. 15-97, dated March 7, 1997 (draft comment letter). March 26, 1997 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 11-97 SEC RULES COMMITTEE No. 34-97 UNIT INVESTMENT TRUST COMMITTEE No. 19-97 RE: INSTITUTE COMMENT LETTER ON SEC PLAIN ENGLISH PROPOSAL

The Institute recently filed a comment letter on the SECs "plain English" disclosure proposal and draft Plain English Handbook.* A copy of the letter is attached, and it is summarized below. The letter expresses strong support for the Commissions objective of improving communications with investors. It notes that mutual funds appropriately are not the main focus of the proposal, since they differ in certain important respects from typical corporate issuers, and already have made great strides in improving their prospectuses. The letter recommends two changes to the draft Plain English Handbook. First, it suggests that the Handbook state explicitly that the examples it provides are not required, or even recommended, disclosure formulations for specific situations. Second, it suggests that the SEC delete from the Handbook an example of disclosure describing the mutual fund fee table because the proposed "after" example is inaccurate and the proposed amendments to Form N- 1A prescribe specific, different disclosure to describe the fee table. With respect to the plain English disclosure rule proposal, the letter urges the Commission and the staff to avoid applying the enumerated "plain English principles" in a rigid or mechanical fashion. The letter opposes the proposed amendment to Rule 461 under the Securities Act that would allow the SEC to refuse to accelerate the effectiveness of a registration statement where the plain English requirements have not been met. It proposes instead that the SEC enforce its existing standard with the plain English principles in mind. (Rule 461 currently provides that the SEC can refuse to accelerate where "there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus.") The letter indicates that the use of plain English should not increase an issuers potential liability. It notes, however, that investment companies are inherently complex and must be permitted to communicate with investors in the manner that best suits their particular circumstances. The letter supports the proposed scope of the plain English proposal and states that if the scope is expanded, the SEC should continue to exclude statements of additional information. The letter recommends that the SEC eliminate, rather than simplify, the cover page legend required by proposed Item 501(b)(5) of Regulation S-K (providing that the SEC has not approved or disapproved the securities or passed upon the adequacy

of the prospectus and that any contrary representation is a criminal offense). The letter states that even when expressed in plain English, this legend is not meaningful to investors. Finally, the letter indicates that if the SEC adopts the plain English requirements, it is essential that they become effective as to mutual funds concurrently with amendments to Form N-1A and approval of fund profiles. Frances M. Stadler Associate Counsel Attachment (in .pdf format)

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