

MEMO# 10094

July 2, 1998

ICI AND ASSOCIATION OF GLOBAL CUSTODIANS SUBMIT PROPOSED AMENDMENTS TO RULE 17F-5; CLARIFICATION OF COMPLIANCE WITH RULE

1 See 62 FR 26923 (May 16, 1997). 2 See Memorandum to SEC Rules Committee No. 48-98, dated May 22, 1998. 3 If the proposed amendments are adopted, it is likely that global custodians will be willing to accept delegation to make the determinations with respect to depositories that are required by Rule 17f-5. [10094] July 2, 1998 TO: SEC RULES COMMITTEE No. 67-98 RE: ICI AND ASSOCIATION OF GLOBAL CUSTODIANS SUBMIT PROPOSED AMENDMENTS TO RULE 17f-5; CLARIFICATION OF COMPLIANCE WITH RULE

Joint
Submission of Proposed Amendments to Rule 17f-5 The Institute and the Association of Global Custodians ("Association") submitted to the Securities and Exchange Commission ("SEC") staff proposed amendments to Rule 17f-5 under the Investment Company Act of 1940. Shortly after the SEC adopted amendments to Rule 17f-5 in 1997 (the "1997 Amendments"),¹ it was determined that some of the new requirements may present problems when a foreign custody arrangement involves the selection of a compulsory depository. As a result, many funds have been unable to establish new custodial arrangements that comply with the rule. The SEC extended the compliance date for the 1997 Amendments until February 1, 1999 in order to consider this submission addressing issues related to depositories and determine whether further refinements to the 1997 Amendments are needed.² The attached letter to the SEC staff notes that, in some instances, fund boards or their foreign custody managers ("FCMs") are not able to obtain the information required under the 1997 Amendments to make an evaluation of a depository or the information set forth in the rule is not relevant to the evaluation. In addition, there are difficulties in making the required subjective or qualitative reasonable care determination with respect to a depository. To address these difficulties, the submission by the Institute and the Association proposes eight objective criteria which, if met, would provide that the FCM's duty to make a reasonable care determination with respect to a depository has been satisfied.³ It argues that the objective criteria, rather than the subjective standards included in the 1997 Amendments, are more appropriate for the evaluation of depositories and are adequate to assure that the depository will afford adequate protection for fund assets. The submission to the SEC staff includes both the text of the proposed amendments to Rule 17f-5 and an appendix that describes the difficulties

FCMs face in meeting the selection criteria for depositories under the 1997 Amendments. The appendix includes a detailed evaluation of several depositories illustrating this point. In addition, the appendix evaluates each of the proposed amendments to Rule 17f-5 and discusses how compliance with the proposal would provide for reasonable protection of investment company assets. Clarification of Compliance with Rule 17f-5 At the last SEC Rules Committee meeting, a question was raised concerning whether funds could comply with amended Rule 17f-5 with respect to some foreign subcustodians and with the old rule with respect to depositories. The release extending the compliance date for the 1997 Amendments states that “[t]he fund may apply either of these alternative frameworks separately to each foreign custodian it uses.”(emphasis added) Despite some ambiguity in the language of the release, the Institute has confirmed with the SEC staff that a fund may comply with the amended rule with respect to a subcustodian and the old rule with respect to a depository as each entity would be considered a separate foreign custodian. * * * * A copy of the Institute’s and Association’s letter to the SEC staff is attached, along with a copy of the text of the proposed amendments. Due to the size of the appendix, it has not been included. If you would like a copy, please call Deborah Washington at 202/326-5818. Marguerite C. Bateman Associate Counsel Attachments

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