

MEMO# 14366

January 16, 2002

INSTITUTE DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17F-4

[14366] January 16, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 4-02 COMPLIANCE ADVISORY COMMITTEE No. 5-02 SEC RULES COMMITTEE No. 6-02 TRANSFER AGENT ADVISORY COMMITTEE No. 5-02 UNIT INVESTMENT TRUST COMMITTEE No. 3-02 RE: INSTITUTE DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17f-4 As we previously advised you, the Securities and Exchange Commission has issued a proposal to amend Rule 17f-4 under the Investment Company Act of 1940, the rule that relates to custody of investment company assets with a securities depository.* The Institute has prepared a draft comment letter (attached) on the proposal. Comments on the proposed amendments are due to the SEC by January 31, 2002. Please provide any comments you have on the Institute's draft letter to Marguerite Bateman at 202/326-5813 (phone), 202/326-5839 (fax), or bateman@ici.org (email), no later than Thursday, January 24, 2002. The Institute's draft letter supports a number of the proposed amendments in the proposal. However, we question the need for or the approach taken with respect to other of the proposed amendments. In summary, the Institute's draft letter: • explains that we believe the approach taken in the proposed amendments to Rule 17f-4 fails to fully reflect the nature of the indirect holding system established under Revised Article 8 of the UCC and, for this reason, the rule should be more substantially revised (attached to the letter is a draft revised rule); • recommends that Rule 17f-4 be revised to reflect what custodians actually are doing when they use securities depositories or other custodians. Rule 17f-4 should be amended to establish minimum standards of performance for the discharge by custodians of duties that are imposed on them with respect to the maintenance of their own financial assets with these securities depositories; * Memorandum to Closed-End Committee No. 22-01, Compliance Advisory Committee No. 60-01, SEC Rules Committee No. 95-01, Transfer Agent Advisory Committee No. 95-01, Unit Investment Trust Committee No. 27-01 (dated Nov. 26, 2001). 2 • supports revisions that would allow funds to use qualified securities depositories directly, but suggests that such provisions should be included in Rule 17f-2 rather than in Rule 17f-4. In this context, the letter opposes the characterization of transfer agents as securities depositories; • supports the elimination of requirements for board approval of arrangements with securities depositories and the elimination of obsolete requirements, such as the segregation and successor custodian requirements; • supports the requirement that funds receive periodic reports concerning the internal accounting controls and financial strength of their own custodians and any securities depositories with which they directly maintain accounts. The letter questions the need for a fund to receive detailed reports concerning these matters for any securities depository and any intermediary used by the fund's custodian; • supports the expansion of

Rule 17f-4 to permit the use of securities depositories by non- management investment companies; and • states that we would oppose the application of Rules 17f-5 and 17f-7 to domestic depositories. Marguerite C. Bateman Associate Counsel Attachment (in .pdf format)

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