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SEC ADOPTS RULE 144A, CREATING SAFE HARBOR FOR RESALES OF RESTRICTED SECURITIES

May 4, 1990 TO: CLOSED-END FUND MEMBERS NO. 18-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 16-90 INVESTMENT ADVISER MEMBERS NO. 17-90 SEC RULES MEMBERS NO. 34-90 UNIT INVESTMENT TRUST COMMITTEE NO. 23-90 INTERNATIONAL FUNDS TASK FORCE NO. 8-90 RE: SEC ADOPTS RULE 144A, CREATING SAFE HARBOR FOR RESALES OF RESTRICTED SECURITIES

_____ The SEC has adopted Rule 144A, which provides a non- exclusive safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of restricted securities to "qualified institutional buyers" as defined in the Rule. A copy of the adopting release is attached. Rule 144A, originally proposed in October 1988, was reproposed by the SEC last July. The Institute submitted a comment letter supporting adoption of the Rule and recommending certain revisions, several of which were incorporated into the final Rule. The Commission also has adopted amendments to Rules 144 and 145 under the 1933 Act to redefine the required holding period for restricted securities. Rule 144A as adopted permits the resale to qualified institutions of restricted securities that, when issued, were not of the same class as securities listed on a U.S. securities exchange or quoted on NASDAQ. A "qualified institutional buyer" generally is an institution, acting for its own account or for the account of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers not affiliated with the institution. In the case of an investment adviser, for example, this means that the adviser may count both proprietary assets and discretionary assets under management (except as noted below) in determining its eligibility as a qualified institutional buyer; however, the adviser can rely on the safe harbor only with respect to purchases made for its own account or for the account of another qualified institutional buyer. The eligibility threshold for registered broker/dealers is $10 million. For purposes of meeting the $100 million test, as the Institute recommended in its comment letter on the reproposed Rule, the value of securities owned by a registered investment company may be aggregated with those of other registered investment companies (except a unit investment trust whose assets consist solely of shares of one or more investment companies) or series thereof or separate accounts that have the same or an affiliated investment adviser (or depositor, in the case of a unit investment trust). The definition of "family of investment companies" in the reproposed Rule did not include funds with affiliated advisers and did not permit aggregation of separate account assets with other investment company assets. Under the final Rule, the following securities are required to be excluded in determining the aggregate

amount of securities which a particular entity owns and invests in on a discretionary basis: securities issued or guaranteed by the United States or by an instrumentality of the United States government, bank deposit notes and certificates of deposit, loan participations, repurchase agreements, securities owned but subject to a repurchase agreement, and currency, interest rate and commodity swaps. As the Institute proposed in its comment letters, the adopting release indicates that with the adoption of Rule 144A, the SEC is modifying its position with respect to the liquidity of restricted securities and related limits on purchases of such securities by open-end investment companies and unit investment trusts. The Commission previously took the position in an interpretive release that restricted securities generally would be regarded as illiquid and thus subject to a limit of 10% of an open-end fund's assets. According to the Rule 144A release, the liquidity of Rule 144A securities now will be a question of fact for the fund's board of directors (or the sponsor of a unit investment trust). The day-to-day responsibility for making this determination may be delegated to the fund's investment adviser as long as the board retains sufficient oversight. It should be noted that some states (notably Wisconsin) still impose limits and/or disclosure requirements on investments in restricted securities. The release states that the Commission is not requiring fund directors to consider any particular factors in evaluating the liquidity of Rule 144A securities at this time, but might publish guidelines for this purpose in the future. Examples of factors that the board should consider, according to the release, would include (1) the frequency of trades and quotes for the security, (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers, (3) dealer undertakings to make a market in the security and (4) the nature of the security and the nature of the marketplace trades (for example, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer). Rule 144A does not apply to resales of securities of open- end investment companies or unit investment trusts that are registered or required to be registered under the Investment Company Act of 1940. According to the release, however, resales of privately placed investment company securities pursuant to Rule 144A will not cause the issuer to lose the private offering exemption under section 3(c)(1) of the 1940 Act, as long as after the resale, the securities are held by no more than 100 beneficial owners. Similarly, a foreign investment company will not violate section 7(d) of the 1940 Act if, after a resale pursuant to Rule 144A, its securities are held by no more than 100 beneficial owners who are U.S. residents. In its final form, Rule 144A imposes an information requirement on an issuer that is neither a reporting company under the Securities Exchange Act of 1934 ("1934 Act"), nor exempt from reporting pursuant to Rule 12g3-2(b) under the 1934 Act, nor a foreign government eligible to use Schedule B under the 1933 Act. Thus the Rule is available in connection with the resale of securities of such an issuer only if the holder of the securities and a prospective purchaser designated by the holder have the right to receive upon request, and the purchaser has received at or prior to the time of sale if requested, certain basic financial information about the issuer. The Rule as reproposed imposed this obligation to provide information on the seller of the securities. In its comment letter on the reproposal, the Institute recommended that the issuer, rather than the seller, be responsible for providing the required information. The information required to be provided includes (1) a brief statement of the nature of the issuer's business and products and services it offers and (2) the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (audited if reasonably available). Rule 144A becomes effective upon its publication in the Federal Register. Frances M. Stadler Assistant General Counsel Attachment