

**MEMO# 7765**

April 4, 1996

## **SEC APPROVES NYSE RULE CHANGE REGARDING VOTING OF PROXIES OF AUCTION RATE PREFERRED SHARES**

1 See Memorandum to Closed-End Fund Committee No. 5-96, dated March 5, 1996. 2See Memorandum to Closed-End Fund Committee No. 2-96, dated February 22, 1996. April 4, 1996 TO: CLOSED-END FUND COMMITTEE No. 10-96 RE: SEC APPROVES NYSE RULE CHANGE REGARDING VOTING OF PROXIES OF AUCTION RATE PREFERRED SHARES

We are pleased to inform you that, as recommended by the Institute, the Securities and Exchange Commission has approved the New York Stock Exchange's proposal to amend Rule 452 to allow NYSE member firms to vote the shares of auction rate preferred securities in the absence of client instructions.<sup>1</sup> The rule amendments, as approved by the SEC, are substantially similar to the amendments as originally proposed<sup>2</sup> and were effective as of March 22, 1996. A copy of the SEC's release is attached. Under the rule, member firms are permitted to vote the shares of auction rate preferred securities with auction reset periods of less than one year, on non-routine matters, in proportion to those votes cast by beneficial holders, so long as: (i) the issuer has transmitted proxy soliciting material to the beneficial owner or its designee; (ii) it has not received voting instructions from the beneficial owner or its designee within the time period specified in the proxy material; (iii) at least 30% of the outstanding shares of the same class or series (where a series vote is required) has been voted by beneficial holders or their designees; (iv) less than 10% of the outstanding shares of the same class or series (where a series vote is required) has been voted by preferred security holders against the proposal; (v) for any proposal as to which both the preferred and common shareholders vote as a single class, proportional voting would not be allowed unless common shareholders have also approved the item; (vi) a majority of the independent directors of the issuer's board of directors has approved the item; and (vii) adequate disclosure of proportional voting has been provided. While the SEC approved the proposed amendments to Rule 452, it also seeks comment on a change that was made to the proposal subsequent to its publication that clarifies that the rule's 30% and 10% requirements apply to the outstanding shares of a particular class or series (where a series vote is required) instead of to all of the outstanding preferred shares. The Commission reasoned that applying the 30% and 10% thresholds to the same class or series (where a series vote is required) instead of to all of the outstanding preferred shares, offers greater protection to the voting interests of holders of each class or series, as applicable. Comments on this aspect of the rule are due to the SEC by April 19th. Dorothy M. Donohue Assistant Counsel Attachment

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