

**MEMO# 8087**

July 25, 1996

## **SEC RE-PROPOSES RULE CHANGES CONCERNING DISCLOSURE OF OWNERSHIP IN PUBLIC COMPANIES**

1 See Memorandum to SEC Rules Committee No. 17-89, Closed-end Fund Committee No. 6-89, Investment Advisers Committee No. 14-89, dated March 21, 1989 (proposing release); Memorandum to SEC Rules Committee No. 25-89, Closed-end Fund Committee No. 16-89, Investment Advisers Committee No. 22-89, Unit Investment Trust Committee No. 22-89, dated May 17, 1989 (Institute's comment letter). July 25, 1996 TO: CLOSED-END FUND COMMITTEE No. 20-96 INVESTMENT ADVISERS COMMITTEE No. 18-96 SEC RULES COMMITTEE No. 77-96 UNIT INVESTMENT TRUST COMMITTEE No. 29-96 RE: SEC RE-PROPOSES RULE CHANGES CONCERNING DISCLOSURE OF OWNERSHIP IN PUBLIC COMPANIES

The Securities and Exchange Commission has re-proposed amendments to Rules 13d-1, 13d-2 and 13d-7 and Schedules 13D and 13G under the Securities Act of 1934, relating to the reporting of beneficial ownership in publicly-held corporations. Similar amendments were proposed in 1989, but were not acted upon by the Commission.<sup>1</sup> According to the SEC, the amendments are being re-proposed at this time to further the goals of disclosure simplification as stated in the Report of the SEC's Task Force on Disclosure Simplification, published in March 1996. A copy of the SEC's release is attached. The following is a brief summary of the proposed amendments.

A. Eligibility to Report on Schedule 13G The SEC re-proposed amendments that would expand the class of investors under Rule 13d-1(b) eligible to report on Schedule 13G. Presently, under Rule 13d-1(b)(1), certain enumerated institutional investors (including registered investment companies and investment advisers) who directly or indirectly own more than five percent of a class of equity securities and who have acquired such securities in the ordinary course of their business and not with the purpose or effect of changing or influencing control of the issuer have the option of filing a short-form report on Schedule 13G. This "Qualified Institutional Investor provision" would be retained. Under the proposed amendments, any investor who acquires more than 5 percent but less than 20 percent of a class of equity securities and who can certify that it did not acquire such securities with the purpose or effect of changing or influencing control of the issuer also would have the option of filing on Schedule 13G ("Passive Investor provision").

2 An investor relying on the proposed Passive Investor provision would be required to file a Schedule 13G within 10 calendar days of reaching the 5 percent threshold. The investor would have the same amendment requirements that currently apply to Schedule 13D filings, as opposed to the more liberal amendment requirements currently applicable (and that would continue to apply) to investors using the Qualified Institutional Investor provision. The proposed amendments would require an investor relying on either the Qualified Institutional Investor or the Passive Investor provision to file a Schedule 13D no

later than 10 days after the investor determines that it has changed its investment purpose. It is proposed that a "cooling-off period" would commence at the time the investor makes such a determination until the tenth calendar day from the date of the filing of a Schedule 13D. During the cooling-off period, the investor could not vote (or direct the voting of) the securities, or acquire additional beneficial ownership in securities of the same class. Upon reaching the 20 percent level, investors relying on the Passive Investor provision would be required to report the acquisition within 10 calendar days on Schedule 13D and would be subject to the cooling-off period. In response to comments by the Institute on the 1989 proposed amendments, the SEC has decided not to re-propose a provision that would have required investors filing a Schedule 13G under the Qualified Institutional Investor provision that own 20 percent or more of a class of equity securities to file a Schedule 13D within ten days of the acquisition and be subject to a cooling-off period. Similar to the 1989 proposal, the proposed amendments would require that originals and amendments to Schedules 13G be provided to each exchange where the security is traded as is currently required for Schedule 13D.

**B. Other Amendments Affecting Investment Companies** The SEC has also proposed several new provisions that would affect institutional investors such as investment companies and investment advisers. The proposed amendments would allow institutional investors who have lost their eligibility to file on Schedule 13G as a result of being unable to certify that they acquired or held securities in the ordinary course of business and not with the purpose or effect of changing or influencing control to re-establish their eligibility and file on Schedule 13G. The amendments would also allow institutional investors to report indirect beneficial ownership through a controlled entity on Schedule 13G so long as the control person does not directly or indirectly own more than one percent of the subject company's stock and is not seeking to change or influence control of the subject company.

**C. Request for Comments** The SEC requests comment on, among other things: (1) the appropriateness of the Passive Investor approach and whether Schedule 13G eligible persons would choose to file on Schedule 13D to avoid the cooling-off period upon a change in investment purpose; (2) whether it is necessary to require that filings on Schedule 13G under the Passive Investor provision be subject to the more stringent amendment requirements currently applicable to Schedule 13D; (3) the appropriateness and adequacy of the ten calendar day cooling-off period; and (4) the appropriateness of a 20 percent ceiling for reporting on Schedule 13G and the cooling-off period with respect to institutional investors who acquire securities other than in the ordinary course of business. \* \* \* The SEC's release contains a useful chart that highlights the proposed changes to Regulation 13D-G. (See Release, 61 FR at 26528). Comments on the proposed amendments must be received by the SEC on or before September 9, 1996. If there are any comments that you would like the Institute to include in a comment letter, please contact the undersigned (at 202/326-5923 or gavis@ici.com) by August 16, 1996. Alexander C. Gavis Assistant Counsel Attachment