

MEMO# 8121

August 5, 1996

SEC PROPOSES REGULATION M UNDER THE SECURITIES EXCHANGE ACT

1 Securities Act Release No. 7282, Securities Exchange Act Release No. 37094; Investment Company Act Release No. 21883, International Release No. 965 (April 11, 1996) ("Release"). 2 See, e.g., Merrill Lynch Prime Fund (Oct. 31, 1989); Allstate Prime Income Trust (November 21, 1989); and Sierra Prime Income Fund (June 5, 1996). August 5, 1996

TO: CLOSED-END FUND COMMITTEE No. 26-96 RE: SEC PROPOSES REGULATION M UNDER THE SECURITIES EXCHANGE ACT

The Securities and Exchange Commission recently published for comment a new regulation containing trading practices rules regarding securities offerings.¹ Proposed Regulation M would replace Rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21 under the Securities Exchange Act of 1934. The proposal is intended to create a simpler, more flexible framework to govern securities trading practices. Described below are the proposed changes that potentially would affect closed-end investment companies. The Commission states that exemptions granted and no-action positions taken under the current trading practice rules no longer would be in effect under Regulation M because the rules under which they were issued would be rescinded. Accordingly, it is our understanding that certain exemptions previously granted by the Commission conditionally permitting closed-end investment companies that continuously offer their shares to conduct periodic tender offers for their own shares would be rescinded by the proposal.² Although the comment period for the proposal expired in June, the Institute plans on filing a comment letter urging the Commission to preserve these exemptions as part of any final action taken on the proposal. Proposed Rule 101 (like current Rule 10b-6) would make it unlawful for distribution participants and their affiliated purchasers in connection with a distribution of securities to bid for, purchase, or attempt to induce any person to bid for or purchase a covered security during the applicable restricted period. Proposed Rule 102 (also like current Rule 10b-6) would similarly restrict the activities of issuers, selling securityholders, and their affiliated purchasers. Rule 102(b)(2) would except from Rule 102 repurchases of equity securities made pursuant to Rule 23c-3 under the Investment Company Act of 1940. (See p. 17120.) Rule 100 would define "affiliated purchaser" somewhat differently than that term is defined in current Rule 10b-6, and the Commission specifically seeks comment on how the new definition would affect investment advisers. (See pp. 17116-17117.) The Commission proposes to rescind Rule 10b-8, which currently restricts certain rights offerings. Bids and purchases of rights would not be covered by Rule 101. Bids and purchases of the security that is the subject of the rights offerings, however, would be restricted by Rule 101. (The proposed treatment of rights offerings would conform with Regulation M's proposed treatment of derivative securities.) The Commission notes that a number of closed-end investment companies recently have conducted rights offerings and

specifically asks if rights offerings by closed-end investment companies present any special manipulative concerns that should be addressed by Regulation M. (See pp. 17119-17120.) Since the comment period has expired, please contact the undersigned at 202/326-5821 as soon as possible, but no later than August 19, 1996, if there are any comments that you would like the Institute to include in a comment letter. Dorothy M. Donohue Assistant Counsel Attachment

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