

MEMO# 11406

November 12, 1999

SEC ADOPTS RULE PERMITTING HOUSEHOLDING OF PROSPECTUSES AND SHAREHOLDER REPORTS AND PROPOSES SIMILAR RULE FOR PROXIES

1 See Memorandum to Operations Committee No. 40-97, Transfer Agent Advisory Committee No. 67-97, SEC Rules Committee No. 113-97, Closed-End Investment Company Committee No. 47-97, and Unit Investment Trust Committee No. 68-97, dated November 19, 1997. 2 SEC Release Nos. 33-7766, 34-42101, IC-24123 (Nov. 4, 1999) (adopting release); SEC Release Nos. 33-7767, 34-42102, IC-24124 (Nov. 4, 1999) (proposing release). 1 [11406] November 12, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 44-99 INVESTMENT ADVISERS COMMITTEE No. 16-99 OPERATIONS COMMITTEE No. 43-99 SEC RULES COMMITTEE No. 96-99 SMALL FUNDS COMMITTEE No. 18-99 TRANSFER AGENT ADVISORY COMMITTEE No. 70-99 UNIT INVESTMENT TRUST COMMITTEE No. 31-99 RE: SEC ADOPTS RULE PERMITTING HOUSEHOLDING OF PROSPECTUSES AND SHAREHOLDER REPORTS AND PROPOSES SIMILAR RULE FOR PROXIES

The Securities and Exchange Commission has adopted a new rule under the Securities Act of 1933 and amendments to rules under the Securities Exchange Act of 1934 that would enable issuers and broker-dealers to deliver one copy of a prospectus or shareholder report to investors who share an address. As the Institute recommended, the new householding rules, unlike the rules proposed in 1997,¹ do not require written consent as a prerequisite to householding with respect to all new investors. The new rule and rule amendments become effective on December 20, 1999. In addition, the SEC has proposed to expand householding to proxy materials. Comments on the proposal are due to the SEC within sixty days from the date of publication in the Federal Register. Copies of the SEC's adopting and proposing releases are attached.² The new and proposed rules are summarized below.

Delivery of Prospectuses and Shareholder Reports to a Household Under new Rule 154, a prospectus will be considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. According to the adopting release, reliance on the rule is not necessary in order to household the prospectuses of a single investor with two or more accounts at the same address. The rule as adopted does not apply to prospectuses required to be delivered in connection with business combinations, exchange offers or reclassifications of securities. Although the general rule states that investors must consent in writing, the rule permits implied consent under the following conditions: (1) the investor has the same last name as the other investors, or the person relying on the rule reasonably believes that the investors are

members of the same family; (2) the person relying on the rule sends the investor a notice (as described below) at least 60 days before householding begins; (3) the person relying on the rule has not received, within 60 days after sending the notice, any notification indicating that the investor wishes to continue to receive an individual copy of the prospectus; and (4) the prospectus is delivered to a post office box or residential street address. The notice must be a separate written statement in plain English. Specifically, the notice must: (1) state that only one prospectus will be delivered to the shared address unless contrary instructions are received; (2) include a toll-free number or be accompanied by a pre-addressed reply form, with postage provided, that the investor can use to request a separate prospectus; (3) state the duration of the consent; (4) explain how an investor can revoke consent; (5) state that the investor will be sent an individual copy of the prospectus within 30 days of the revocation of his or her consent; and (6) contain a prominent statement such as "Important Notice Regarding Delivery of Shareholder Documents," which must also appear on the envelope in which the notice is delivered (or, alternatively, on either the notice or the envelope, if the notice is delivered separately from other communications). In addition, with respect to the householding of open-end investment company prospectuses, investors who have provided written or implied consent to householding must be provided, at least once a year, an explanation of how they can revoke their consent. This explanation must be reasonably designed to reach these investors, and, according to the release, may be included in a prospectus, shareholder report, or investor newsletter. Householding of shareholder reports is permitted under substantially the same circumstances as those applicable to prospectuses. The adopting release notes that mutual funds that already household shareholder reports in reliance on no-action letters may continue to household shareholder reports of investors whose reports are already being householded, without sending notices or obtaining written consent, unless the investor revokes his or her consent.

Proposal to Permit Householding of Proxy and Information Statements The SEC has proposed in a companion release to amend the proxy rules to permit the householding of proxy and information statements by companies and by intermediaries. Under the proposal, however, multiple proxy cards or voting instruction forms – one for each shareholder residing at a shared address – would be required to be delivered with proxy statements that are householded, and the company would be required to include an undertaking in the proxy statement to deliver separate copies upon written or oral request. In addition, the SEC has proposed to expand Rule 154 to permit householding of combined proxy statement-prospectuses delivered in connection with business combinations, exchange offers, and reclassifications of securities. The SEC also has proposed amendments to Rules 14b-1 and 14b-2 under the Exchange Act to permit intermediaries to household the annual report, proxy statement or information statement to beneficial owners. The proposed rules do not include any specific provisions regarding householding of proxy materials to investment advisers and investment managers of ERISA plans who have been designated to vote proxies and receive proxy materials on behalf of multiple shareholder accounts. According to the release, the general provisions of the proposed rule would permit companies to solicit written consent to householding of proxy materials from such persons. The SEC requests comment as to whether companies should be permitted instead to household to investment advisers and investment managers without reliance on the rule or by implied consent. The SEC also has solicited comments on a number of other provisions of this proposal. If you have comments or issues that you would like the Institute to consider including in a comment letter on the proposal, please contact me (telephone: 202/371-5432, fax: 202/326-5827, or e-mail: kireland@ici.org) no later than Thursday, December 2, 1999. Kathy D. Ireland Associate Counsel Attachments

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