

MEMO# 4389

January 7, 1993

INSTITUTE REQUESTS EXEMPTION FOR INVESTMENT COMPANIES AND INVESTMENT ADVISERS FROM PUBLIC UTILITY HOLDING COMPANY ACT

January 7, 1993 TO: SEC RULES COMMITTEE NO. 3-93 INVESTMENT ADVISERS COMMITTEE
NO. 2-93 RE: INSTITUTE REQUESTS EXEMPTION FOR INVESTMENT COMPANIES AND
INVESTMENT ADVISERS FROM PUBLIC UTILITY HOLDING COMPANY ACT

_____ In the attached comment letter, the Institute has requested that the Securities and Exchange Commission adopt rules exempting registered investment companies and investment advisers from the Public Utility Holding Company Act of 1935 ("1935 Act"). Currently, under the 1935 Act, an investment company may be deemed to be a public utility holding company if it holds more than 10% of the voting securities of any one public utility or public utility holding company. In addition, an investment company which holds 5% of the voting shares of any one public utility company or public utility holding company would be unable to purchase 5% or more of the securities of any other utility or utility holding company without an exemption. Investment advisers also may be subject to these restrictions, through attribution of their clients' holdings. The Institute initially submitted an exemptive request to the staff of the Division of Investment Management in October 1988. At that time, the staff responded that it would be unable to address the Institute's proposal in the near future because of limited resources and too much other work of higher priority. However, as the attached letter notes, the Commission is currently considering amending several rules under the 1935 Act to reduce certain regulatory burdens, so it appears this may be an appropriate time for the Commission to address the Institute's proposal as well. The attached letter reiterates the view expressed in the Institute's 1988 submission that the 1935 Act was not intended to cover registered investment companies and investment advisers (on behalf of clients) purchasing utility company securities in the ordinary course of business and not for the purpose of influencing or exercising control. It refers the Commission to the 1988 exemptive request, which is attached to the comment letter. We will keep you informed of developments. Frances M. Stadler Assistant Counsel Attachment