

MEMO# 8037

July 8, 1996

REQUEST TO CONTACT CONGRESS RE: ""QUALIFIED PURCHASER"" EXEMPTION IN MUTUAL FUND LEGISLATION

1 See Memorandum to Board of Governors No. 31-96, Federal Legislation Members No. 9-96, Members - One Per Complex No. 51-96, Public Information Committee No. 26-96, SEC Rules Committee No. 63-96, and State Liaison Committee No. 18-96, dated June 19, 1996. 2 See Memorandum to Board of Governors No. 35-96, Federal Legislation Members No. 11-96, Members - One Per Complex No. 54-96, Public Information Committee No. 29-96, SEC Rules Committee No. 67-96, and State Liaison Committee No. 19-96, dated June 28, 1996. Sent Via Facsimile July 8, 1996 TO: BOARD OF GOVERNORS No. 37-96 MEMBERS - ONE PER COMPLEX No. 56-96 RE: REQUEST TO CONTACT CONGRESS RE: "QUALIFIED PURCHASER" EXEMPTION IN MUTUAL FUND LEGISLATION

The purpose of this memo is to ask that you write certain members of Congress in support of a major Institute legislative initiative. Background As you know, the House of Representatives and the Senate have passed H.R. 30051 and S. 18152, major securities legislation. A major difference in the two bills centers on a provision to create a new exemption from the Investment Company Act for investment pools offered exclusively to "qualified purchases." Since both bills contain such a provision, some type of exemption is almost certain to be included in the final legislation. Current Status Under current law, private investment companies, such as hedge funds, are exempt from the Investment Company Act if their shares are held by no more than 100 investors and if they are not publicly offered. While the Institute supports a new exemption from the Investment Company Act for private investment companies offered exclusively to "qualified purchasers," the Institute has urged that the exemption be carefully crafted to ensure that these pools offer investment opportunities without compromising investor protections. Institute Position The Institute supports the "qualified purchaser" exemption contained in the House bill, H.R. 3005. The House bill *s provision would exempt an investment pool that is offered only to natural persons with at least \$10 million in "securities," and institutions with at least \$100 million in "securities." The Institute believes the provision to be a reasonable change in the Investment Company Act which offers investment opportunities without diminishing investor protection. -2- The Senate bill (S. 1815) also provides for such a "qualified purchaser" exemption, but differs in three serious respects from the House bill. C First, and most troubling, it would grant the SEC unprecedented rulemaking authority to define new classes of exempt purchasers by permitting the SEC to lower the bill*s statutory thresholds at any time. C Second, the thresholds refer broadly to "investments" rather than "securities," leaving open the possibility that "investments" could include a family business or farm or personal residence. C Third, it would lower the dollar thresholds to \$5 million for

natural persons and \$25 million for institutions. Thus, the Senate bill would authorize the offering of unregulated pooled investment vehicles to investors who may not possess the financial resources or investment sophistication necessary to safeguard their own interests in the absence of the investor protections of the Investment Company Act. Action Requested In order for the House provisions to prevail, it is imperative that the members of Conference Committee hear from leaders in the fund industry on this issue. I urge you to sign the attached letter which expresses strong support for the "qualified purchaser" exemption in the House bill, and objects to the Senate version. The letter will go to the Conferees from as many industry signatories as can be gathered by close of business on July 12. Please sign and return by overnight mail the attached letter to Tom Boyd, Vice President-Legislative Affairs, by close of business on Friday, July 12th. To assist us in the production of the final letter, please have your signature or that of another senior officer affixed, and please type the signatory's name and your complex's name and location under the signature. The signature will be affixed with those of your colleagues on one letter delivered to all Conferees. Thank you for your assistance with this important matter. I strongly urge your support of this Institute initiative. If you have any questions, please call either Tom Boyd at (202) 326-8319 or Julie Domenick, Senior Vice President-Public Affairs at (202) 326-5890. Matthew P. Fink President Attachment

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