

MEMO# 2800

May 31, 1991

REPORTING REQUIREMENTS APPLICABLE UNDER GERMAN LAW TO U.S. INVESTMENT COMPANIES AND ADVISERS INVESTING IN GERMANY

May 31, 1991 TO: SEC RULES COMMITTEE NO. 31-91 INTERNATIONAL MEMBERS NO. 2-91
RE: REPORTING REQUIREMENTS APPLICABLE UNDER GERMAN LAW TO U.S. INVESTMENT
COMPANIES AND ADVISERS INVESTING IN GERMANY

_____ In response to our inquiry, counsel retained by the Institute in Germany recently advised us that although there are no restrictions under German law that limit investment by U.S. investment companies or advisers in German corporations or other entities, certain levels of ownership trigger reporting requirements. For example, investments by non-residents must be reported to the Deutsche Bundesbank (presumably by the issuer) for statistical purposes. In addition, an entity that acquires more than 25% of a German stock corporation (Aktiengesellschaft) must promptly advise such corporation, and the corporation in turn is required to publish this information. These requirements apply again when an entity acquires more than 50% of a German corporation. No disclosures to any regulatory authority are required. For purposes of calculating the percentage of ownership, all shares held by entities "dominated" by another must be aggregated. Under German law, the concept of "domination" generally means that the "dominating" party holds a majority of the shares or controls the majority of votes in the "dominated" entity. Although an identical concept does not exist under U.S. law, it appears that a U.S. investment adviser normally would not be required to aggregate the holdings of all investment companies and other clients it advises for these purposes, unless the adviser had the power to vote a majority of the portfolio securities or otherwise could cause the investment companies and/or other clients to act in concert. It should be noted, however, that there is also a possibility that an adviser could be found to "dominate" an investment company where a majority of the board of directors consists of interested persons of the adviser. This situation has no parallel in the case of German investment companies, which are organized in contractual form and have no board of directors. Frances M. Stadler Assistant General Counsel

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