

MEMO# 1162

May 17, 1989

INSTITUTE COMMENT LETTER ON PROPOSED RULE CHANGES UNDER SECTION 13(D) OF THE SECURITIES EXCHANGE ACT

May 17, 1989 TO: SEC RULES COMMITTEE NO. 25-89 CLOSED-END FUND COMMITTEE NO. 16-89 INVESTMENT ADVISERS COMMITTEE NO. 22-89 UNIT INVESTMENT TRUST COMMITTEE NO. 22-89 RE: INSTITUTE COMMENT LETTER ON PROPOSED RULE CHANGES UNDER SECTION 13(D) OF THE SECURITIES EXCHANGE ACT

As we previously informed you, the Securities and Exchange Commission has proposed to amend certain rules under Section 13(d) of the Securities Exchange Act, relating to the reporting of beneficial ownership in publicly-held companies. (See Memorandum to SEC Rules Committee No. 17-89, Closed-End Fund Committee No. 6-89 and Investment Advisers Committee No. 14-89, dated March 21, 1989 and Memorandum to Unit Investment Trust Committee No. 14-89, dated March 27, 1989.) The proposed changes would allow non-institutional investors to use the short-form Schedule 13G for reporting holdings of more than 5% of a class of equity securities, provided the filing person has a passive investment purpose and owns less than 20% of that class. The revised rules would also require all institutional investors that currently are eligible to file on Schedule 13G pursuant to Rule 13d-1(b)(1), to file a Schedule 13D within ten days of the acquisition of 20% or more of a class of equity securities. Any such institutional investor would be subject to a "cooling-off period" that would terminate upon filing of the Schedule 13D. During the cooling-off period, the investor could not vote (or direct the voting of) the securities, or acquire additional securities of the same class. Attached is a copy of Institute's comment letter on the proposal. In its comment letter, the Institute suggested that institutional investors that own more than 20% of a class of equity securities be permitted to file reports on Schedule 13D on the same basis and subject to the same timing requirements as currently required for reporting 10% positions on Schedule 13G, i.e., within ten days after the end of the month in which 20% ownership occurs, computed on the last day of the month, and with no cooling-off period. The Institute additionally recommended that passive non-institutional investors eligible to file on Schedule 13G under the proposed rules also be permitted to file such reports on a monthly basis and that ownership of 20% or more of certain classes of preferred stock and convertible securities with limited voting rights remain reportable on Schedule 13G. The Institute also suggested that the Commission consider expanding the class of parent holding companies eligible to file on Schedule 13G. In its letter, the Institute also addressed several items on which the Commission specifically requested comment, including a suggestion that Schedule 13Gs be filed more frequently. The Institute opposed any changes

in this area. Finally, the Institute urged the Commission to make due allowance for the need to avoid unnecessary burdens on institutional investors, not only in connection with the Section 13(d) rules, but also in its consideration of the recent proposed amendments to the rules under Section 16 of the Securities Exchange Act, with respect to which the Institute had filed two comment letters. (See Memorandum to SEC Rules Members No. 18-89, Closed-End Fund Members No. 16-89, Investment Adviser Members No. 22-89 and Investment Adviser Associate Members No. 21-89, dated March 15, 1989 and Memorandum to Unit Investment Trust Members No. 24-89, dated April 20, 1989.) We will keep you informed of developments. Craig S. Tyle Assistant General Counsel

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