MEMO# 9604

January 16, 1998

INSTITUTE COMMENT LETTER ON SEC'S PROPOSED AMENDMENTS TO PERFORMANCE FEE RULE

* See Memorandum to Investment Advisers Committee No. 33-97, dated November 19, 1997 and Memorandum to Closed-End Investment Company Committee No. 48-97, SEC Rules Committee No. 114-97, dated November 21, 1997. [9604] January 16, 1998 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 3-98 INVESTMENT ADVISERS COMMITTEE No. 3-98 SEC RULES COMMITTEE No. 4-98 RE: INSTITUTE COMMENT LETTER ON SEC'S PROPOSED AMENDMENTS TO PERFORMANCE FEE RULE ____ As we previously reported, the Securities and Exchange Commission proposed amendments to Rule 205-3 under the Investment Advisers Act of 1940, the rule that permits investment advisers to charge certain clients performance fees.* A copy of the InstituteGs comment letter on the proposal is attached and briefly summarized below. The letter supports the proposed amendments to Rule 205-3 that would permit investment advisers to enter into performance fee arrangements with any client with a net worth in excess of $1,500,000 or assets under the management of the investment adviser of at least $750,000 (“qualified clients”). (The current requirements are $500,000 and $1,000,000 respectively.) The letter states that it is reasonable to revise the thresholds in the current rule, as proposed, to reflect the effects of inflation since Rule 205-3 was adopted in 1985. The letter also recommends that the Commission revise the proposed definition of qualified clients to include certain “knowledgeable employees” of the investment adviser even if they do not meet the ruleGs criteria regarding net worth or assets under management. Because of their financial acumen and experience in working in the investment advisory industry, these persons should be capable of protecting their own interests in negotiating performance fees. The letter strongly supports the proposed elimination of several conditions in current Rule 205-3 that prescribe the methodology for computing a performance fee and that require advisers to make certain specific disclosures about performance fees. The letter points out that qualified clients are capable of protecting their own interests and, therefore, the particulars of any performance fee arrangement are best left to negotiation between the client and the adviser. The letter also requests clarification regarding whether Rule 205-3 permits a trust, governmental plan, collective trust fund, or separate account referred to in section 3(c)(11) of the Investment Company Act to be charged a “fulcrum fee.” Dorothy M. Donohue Associate Counsel Attachment