

MEMO# 10870

April 6, 1999

INSURANCE COVERAGE FOR INDEPENDENT DIRECTORS IN SUITS BROUGHT BY MANAGEMENT

[10870] April 6, 1999 TO: DIRECTOR SERVICES COMMITTEE No. 13-99 RE: INSURANCE
COVERAGE FOR INDEPENDENT DIRECTORS IN SUITS BROUGHT BY MANAGEMENT

ICI Mutual
Insurance Company recently revised its liability insurance policy to address concerns expressed by SEC Chairman Arthur Levitt with the “insured vs. insured” exclusion commonly found in directors and officers/errors and omissions (D&O/E&O) liability insurance. The exclusion addresses situations in which one party sues another covered by the same insurance policy and was put in place originally to avoid collusive activity. However, exceptions to the exclusion did not address situations in which a fund adviser sues the fund’s independent directors. The revision to the insurance policy allows fund directors to recover for defense costs, settlements and judgments in bona fide “insured vs. insured” claims otherwise covered under the policies. A copy of the ICI Mutual press release announcing the revised policy is attached to this memorandum. Marguerite C. Bateman
Associate Counsel Attachment

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