

MEMO# 2133

August 23, 1990

SEC PROPOSES AMENDMENTS TO RULE 6C-9

August 23, 1990 TO: SEC RULES COMMITTEE NO. 45-90 INTERNATIONAL FUNDS TASK
FORCE NO. 19-90 RE: SEC PROPOSES AMENDMENTS TO RULE 6c-9

The SEC has published for comment proposed amendments to Rule 6c-9 under the Investment Company Act of 1940 ("1940 Act"). In its current form, Rule 6c-9 exempts foreign banks and their finance subsidiaries that offer or sell their debt securities or non-voting preferred stock within the United States from registration as investment companies under the 1940 Act. As proposed to be amended, the Rule would be expanded to exempt offers and sales by foreign banks and their finance subsidiaries of their equity securities, offers and sales by foreign insurance companies and their finance subsidiaries of their equity and debt securities, and offers and sales by certain foreign bank and insurance company holding companies of their equity and debt securities from registration under the 1940 Act. A copy of the proposing release is attached. Like recently adopted Rule 12d1-1, which removed restrictions on registered investment companies' purchases of equity and debt securities issued by foreign banks and insurance companies and their finance subsidiaries, Rule 6c-9 would apply only to direct interests in or obligations of a foreign bank or insurance company or a finance subsidiary of a foreign bank or insurance company. (The proposed amendments to Rule 6c-9 would define a foreign insurance company and a finance subsidiary of a foreign bank or foreign insurance company in the same way as Rule 12d1-1.) Unlike Rule 12d1-1, however, Rule 6c-9 as proposed to be amended also would apply to a "qualified holding company" of a foreign bank or insurance company. Along with the proposed amendments to Rule 6c-9, the SEC issued a companion interpretive release setting forth its position that for the purpose of determining the applicability of 1940 Act registration requirements, a U.S. branch or agency of a foreign bank that issues securities in the U.S. will be deemed to be a "bank" within the meaning of Section 2(a)(5)(c) of the 1940 Act if it is subject to "substantially equivalent" federal and/or state regulation and supervision as domestic banks in the same jurisdiction. A copy of that interpretive release also is attached. Comments on the proposed amendments to Rule 6c-9 are due 90 days from publication in the Federal Register. Among other things, the Institute plans to suggest that Rule 12d1-1 be conformed to Rule 6c-9 as proposed to be amended, by expanding it to apply to securities issued by a "qualified holding company" of a foreign bank or insurance company, and that the SEC's interpretive position with respect to U.S. branches or agencies of foreign banks be applicable for purposes of Rule 12d1-1. If there are other comments or positions you would like the Institute to consider, please contact me by September 25, 1990. Frances M. Stadler Assistant General Counsel Attachments

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