

MEMO# 3072

September 9, 1991

DRAFT INSTITUTE COMMENT LETTER ON PROXY REFORM

September 9, 1991 TO: SEC RULES COMMITTEE NO. 53-91 INVESTMENT ISSUES COMMITTEE
NO. 12-91 RE: DRAFT INSTITUTE COMMENT LETTER ON PROXY REFORM

As we previously informed you, the SEC has proposed amendments to the proxy rules under the Securities Exchange Act. (See Memorandum to SEC Rules Committee No. 35-91 and Investment Issues Committee No. 4-91, dated June 19, 1991.) The proposed amendments would (1) establish an exemption from the proxy rules for certain solicitations by "disinterested persons", (2) eliminate the requirement for preliminary filing of proxy materials with respect to soliciting materials other than proxy statements and forms of proxy, (3) make all proxy materials filed with the Commission publicly available upon filing and (4) allow securityholders access to shareholder lists for purposes of making solicitations. The proposals would apply both to listed companies registered under Section 12 of the Securities Exchange Act and to registered investment companies. Attached is a draft of the Institute's comment letter on the proposed rule changes. The principal comments concern the proposal to allow access to shareholder lists. The draft letter strongly opposes applying this to open-end investment companies on the grounds that shareholders of mutual funds are different in many important respects from shareholders of publicly traded companies. These include that a fund's shareholders constitute the customers of the fund's adviser, in which the adviser has a proprietary interest, and that mutual fund shareholders have greater privacy interests with respect to their account information than shareholders of publicly-traded companies. The letter also states that the protections provided by the Investment Company Act, including independent directors, actions that require shareholder approval and daily redemptions, satisfactorily respond to the policy concerns that underlie the proposed rule changes. Finally, the letter states that the alternative suggested in the Commission's release -- allowing registrants to retain control over their shareholder lists if they agree to assume the costs of mailing the materials -- is inadequate since it would expose fund shareholders to open-ended liability for such costs. The draft letter also contains a bracketed section opposing the proposed exemption for solicitations by disinterested shareholders. Instead, the letter suggests a compromise that would exempt these solicitations only if they were disseminated only to institutional investors. Please consider if this section should be included in the letter and, if so, whether any changes should be made to it. Do the interests of funds as registrants in ensuring that solicitations by shareholders be balanced and subject to Commission review outweigh the interests of funds as investors in reducing costs and burdens associated with proxy regulation? Should the Institute remain silent on this proposal? Should it endorse the proposal? Please also consider whether the Institute's letter should address the proposals concerning preliminary

filing and confidentiality and, if so, what our positions should be. The comment letter is due Monday, September 23. Please call me at 202/955-3522 or Amy Lancellotta at 202/955-3523 with any comments on the draft, including those items noted above, no later than Tuesday, September 17. Craig S. Tyle Associate General Counsel Attachment

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