

**MEMO# 2711**

April 24, 1991

# **ISSUES CONCERNING NEW RULES UNDER SECTION 16 OF 1934 ACT; INSTITUTE REQUEST FOR INTERPRETIVE GUIDANCE UNDER RULE 17J-1 OF THE 1940 ACT AND RULE 204-2 OF THE ADVISERS ACT**

April 24, 1991 TO: SEC RULES COMMITTEE NO. 23-91 CLOSED-END FUND COMMITTEE NO. 7-91 UNIT INVESTMENT TRUST COMMITTEE NO. 18-91 INVESTMENT ADVISERS COMMITTEE NO. 18-91 RE: ISSUES CONCERNING NEW RULES UNDER SECTION 16 OF 1934 ACT; INSTITUTE REQUEST FOR INTERPRETIVE GUIDANCE UNDER RULE 17j-1 OF THE 1940 ACT AND RULE 204-2 OF THE ADVISERS ACT

Issues Under Amended Section 16 Rules

As we previously informed you, the SEC recently adopted changes to the rules under Section 16 of the Securities Exchange Act of 1934, governing reporting and short-swing profit recovery with respect to certain insider transactions. (See Memorandum to SEC Rules Members No. 12-91, Unit Investment Trust Members No. 8- 91, Investment Adviser Members No. 7-91, dated February 22, 1991 and Memorandum to Closed-End Fund Members No. 11-91, dated February 27, 1991). The Institute has received several calls from members with questions relating to the new rules, and is considering forming a task force to address those issues that have arisen. Depending on the extent and nature of the issues, it may be necessary to seek relief or interpretive guidance from the SEC staff. We are currently in the process of considering such issues to determine whether it would be useful to create a task force. Please provide me with any issues affecting investment companies and/or investment advisers that your firm has identified under the amended Section 16 rules by May 10, 1991. (My direct number is 202/955-3523 and our fax number is 202/659-1519.) In addition, if you are interested in participating on a task force on Section 16 issues, if one is formed, please contact Michele Dugue at 202/955-3515 by that date. Institute Request for Interpretive Guidance One issue that has arisen in connection with the recent amendments to the Section 16 rules concerns the definition of the term "beneficial ownership" for purposes of Rule 17j-1(c)(1) under the Investment Company Act and Rule 204-2(a)(12) and (13) under the Advisers Act. (Rule 17j-1(c)(1) prescribes certain securities transaction reporting requirements for "access persons" of investment companies, their advisers and principal underwriters; reports to an investment adviser by its access persons are not required where they would duplicate information recorded pursuant to Rule 204-2(a)(12) and (13) of the Advisers Act.) Rule 17j-1(c)(1) states that beneficial ownership under that rule should be determined in the same manner as it is under Section 16 of the

Exchange Act and the rules thereunder. However, the release adopting the changes to the rules under Section 16 did not address the cross-reference to Section 16 in Rule 17j-1(c)(1). Therefore, it was unclear whether both prongs of the new two-part definition of "beneficial owner" included in Rule 16a-1 should be applied for Rule 17j-1(c)(1) purposes and for purposes of Rule 204-2(a)(12) and (13), which has similar objectives to Rule 17j-1(c)(1). The Institute submitted the attached letter to the SEC staff requesting interpretive guidance on this matter. In its letter, the Institute recommended that "beneficial ownership" for purposes of Rule 17j-1(c)(1) and Rule 204-2(a)(12) and (13) be determined in accordance with the new two-part definition included in Rule 16a-1 of the Exchange Act. We will keep you informed of developments. Amy B.R. Lancellotta Assistant General Counsel Attachment

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