

**MEMO# 4071**

September 2, 1992

## **INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 144A**

September 2, 1992 TO: SEC RULES COMMITTEE NO. 67-92 INTERNATIONAL COMMITTEE NO. 18-92 RE: INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 144A

As we previously informed you, the SEC recently proposed amendments to Rule 144A under the Securities Act of 1933 to expand the categories of entities eligible to be "qualified institutional buyers" under the rule and to permit the inclusion of U.S. government securities for purposes of determining whether an institution owns and invests on a discretionary basis at least \$100 million in eligible securities. (See Memorandum to SEC Rules Committee No. 50-92, International Committee No. 15-92, dated July 24, 1992.) The Institute filed the attached comment letter with the SEC earlier this week. The Institute's comment letter did not oppose the Commission's proposal to add bank collective trust funds and master trusts to the list of eligible purchasers under Rule 144A. However, the letter did oppose the proposal to treat purchases by an insurance company for its unregistered separate accounts as purchases by the insurance company for its own account under the rule. The letter states that this approach would allow potentially small entities to purchase Rule 144A securities (contrary to the intent of the rule) and would be inconsistent with the treatment of similar types of purchasers, including investment companies, under the rule. The Institute's letter supported the Commission's proposal to permit entities to include their investments in U.S. government securities for purposes of establishing qualified institutional buyer status under the rule, and further recommended that securities acquired under repurchase agreements be counted for this purpose. Finally, the Institute proposed an amendment to the rule to permit a purchaser that is a member of a family of investment companies to provide a certification to a seller of Rule 144A securities that, as of a specified date, the family owned and invested on a discretionary basis more than \$100 million in securities (rather than a specific dollar amount, as is currently required). We will keep you informed of developments. Frances M. Stadler Assistant Counsel Attachment