

MEMO# 2751

May 13, 1991

SEC STAFF ISSUES INTERPRETIVE LETTER REGARDING APPLICATION OF SECTION 16 TO INVESTMENT COMPANIES AND TO CONTROLLING PERSONS OF INVESTMENT ADVISERS

May 13, 1991 TO: SEC RULES MEMBERS NO. 29-91 CLOSED-END FUND MEMBERS NO. 20-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 18-91 SECTION 16 TASK FORCE RE: SEC STAFF ISSUES INTERPRETIVE LETTER REGARDING APPLICATION OF SECTION 16 TO INVESTMENT COMPANIES AND TO CONTROLLING PERSONS OF INVESTMENT ADVISERS

In response to a request for interpretive advice with respect to the filing requirements under Section 16 of a natural person who, among other things, is a controlling person of an investment adviser to several mutual funds which has a subsidiary company that serves as adviser for several hundred private accounts, the SEC staff declined to confirm that the individual is not deemed to have beneficial ownership of the equity securities owned by the funds and the private accounts. Thus, it appears that if the aggregate ownership by the mutual funds and the private accounts of equity securities of an issuer registered under Section 12 exceeds 10%, the individual must comply with the Section 16 reporting requirements, even though the investment advisory entities are not required to do so. (Those entities are permitted to report ownership on short form Schedule 13G as long as they hold the securities for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business and the securities are acquired without the purpose or effect of changing or influencing control of the issuer.) Moreover, if the individual buys or sells any of those securities for his personal account, he will be subject to the short-swing profit recovery requirements under Section 16. The SEC staff also provided interpretive advice that registered investment companies are considered to hold their portfolio securities "for the benefit of third parties or in customer or fiduciary accounts" within the meaning of that phrase in Rule 16a-1(a)(1). Thus, investment companies are not deemed to have beneficial ownership of their portfolio securities for purposes of determining 10% beneficial ownership status under Section 16. Copies of the interpretive request and the staff's response are attached. Amy B.R. Lancellotta Assistant General Counsel Attachment

should not be considered a substitute for, legal advice.