

**MEMO# 9922**

May 12, 1998

## **MARYLAND ENACTS INDEPENDENT DIRECTORS LEGISLATION**

\* See *Strougo v. Padeys*, 964 F. Supp. 783 (S.D.N.Y. 1997) [9922] May 12, 1998 TO: BOARD OF GOVERNORS No. 26-98 CLOSED-END INVESTMENT COMPANY MEMBERS No. 13-98 INVESTMENT COMPANY DIRECTORS No. 3-98 PRIMARY CONTACTS - MEMBER COMPLEX No. 34-98 SEC RULES MEMBERS No. 33-98 RE: MARYLAND ENACTS INDEPENDENT DIRECTORS LEGISLATION

I am pleased to report that the Governor of Maryland today signed into law legislation that will reaffirm for purposes of Maryland corporate law that the Investment Company Act of 1940 governs the determination of whether a director of an investment company is an "interested person." This new law, which applies to all cases filed on or after January 30, 1998 (the date the bill was originally introduced), will only impact those investment companies that are organized under Maryland law. This legislation was introduced in response to a decision entered by the United States District Court for the Southern District of New York in May 1997 in the *Strougo* case.\*. This decision held that, for purposes of Maryland law, receipt of directors' fees for service on the boards of several investment companies with the same investment adviser called into question the independence of those directors. Based on this ruling, the court excused a plaintiff-stockholder from making demand on the board of directors of an investment company prior to filing a derivative action challenging a decision by the directors. Enactment of this legislation was actively supported by the Institute and, in particular, its Maryland members, as well as by the Maryland Bar Association and the Maryland Securities Association. A copy of this new law is attached. Matthew P. Fink President Attachment