

**MEMO# 12925**

December 12, 2000

## **SEC PROPOSES AMENDMENTS TO RULE 10F-3 UNDER THE INVESTMENT COMPANY ACT**

[12925] December 12, 2000 TO: SEC RULES COMMITTEE No. 132-00 RE: SEC PROPOSES AMENDMENTS TO RULE 10f-3 UNDER THE INVESTMENT COMPANY ACT The Securities and Exchange Commission has proposed amendments to Rule 10f-3 under the Investment Company Act of 1940, the rule that permits a registered investment company ("fund") that has certain affiliations with an underwriting participant to purchase securities during an offering.<sup>1</sup> The proposed amendments would (1) expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering, and (2) modify the rule's quantitative limit on purchases to cover purchases by a fund as well as any other account advised by the fund's investment adviser. The Proposing Release is attached, and it is summarized below. The comment period ends February 15, 2001. The Institute has scheduled a conference call for Tuesday, January 9, 2001 at 2:00 p.m., Eastern time, to discuss this proposal. If you would like to participate on the call please contact my assistant, Stephanie Holly, by phone at (202) 326-5923, by fax at (202) 326-5827, or by email at sholly@ici.org. If you are unable to participate but would like to provide comments for the Institute's consideration, please call me at (202) 326-5923, or email me at bsimmons@ici.org by Monday, January 8, 2001. The Proposing Release identifies several factors the Commission considered in proposing to include government securities as a permitted investment under Rule 10f-3.<sup>2</sup> It notes that under the proposal, the other restrictions of the rule, such as the limitations on the price and quantity of securities purchased, would apply to the purchase of government securities by a fund. The Commission seeks comment on whether any of these limitations should not apply to purchases of government securities. The Commission also seeks comment on whether the rule should include limitations on the purchase of government securities that do 1

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, SEC Rel. No. IC-24775 (Nov. 29, 2000); 65 Fed. Reg. 76189 (dated Dec. 6, 2000) ("Proposing Release"). 2 The Proposing Release notes that: (1) government securities are high-quality investments, and therefore unlikely to be dumped into a fund; (2) the circumstances under which government agencies offer their securities to the public appear to be an effective substitute for Securities Act registration; (3) government agencies generally must obtain approval from the Department of Treasury concerning the timing, price and terms of the securities offering; (4) information about government securities typically is available to the public through prospectuses or similar offering documents; and (5) government securities trade actively in the secondary market. 2not apply to other securities purchased under the rule, such as requiring that government securities receive a

certain credit rating from a Nationally Recognized Statistical Rating Organization, as is required for municipal securities. The Commission also proposes to amend Rule 10f-3's quantitative limit on purchases to require that if a fund purchases securities in reliance on the rule, its purchases, aggregated with the purchases by any other fund advised by the fund's adviser, and any other account over which the adviser has discretionary authority or otherwise exercises control, could not exceed 25 percent of the offering. The Proposing Release notes that this change is intended to address a possible "loophole" in the rule that could permit an adviser to circumvent the percentage limit and compromise the effectiveness of the rule by not aggregating the purchases of its other "non-fund" clients. The Commission seeks comment on whether in light of this proposal the 25 percent limit should be increased. Barry E. Simmons Associate Counsel Attachment (in .pdf format)

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