

MEMO# 3006

August 13, 1991

INSTITUTE COMMENTS ON SEC PROPOSAL CONCERNING LIMITED PARTNERSHIP ROLL-UP TRANSACTIONS

August 13, 1991 TO: SEC RULES COMMITTEE NO. 46-91 CLOSED-END FUND COMMITTEE
NO. 21-91 RE: INSTITUTE COMMENTS ON SEC PROPOSAL CONCERNING LIMITED
PARTNERSHIP ROLL-UP TRANSACTIONS

_____ As we previously informed you, the SEC has proposed rules aimed at curbing abuses in connection with limited partnership roll-up transactions. (See Memorandum to SEC Rules Committee No. 40-91 and Closed-End Fund Committee No. 18-91, dated July 16, 1991.) As drafted, the SEC's proposal does not apply to investment company business combination transactions, since amendments to Form N-14 were not proposed. However, the proposed definition of "partnership" is very broad and includes all entities that are taxed as pass-through entities under the Internal Revenue Code. Therefore, all investment companies, regardless of whether they are organized as limited partnerships, corporations or business trusts, fall within the scope of this proposed definition. In response, the Institute submitted the attached letter recommending that investment companies that are registered under the Investment Company Act be excluded from the definition of "partnership" on the grounds that the proposed rules regarding roll-up transactions would not provide any additional protections to investment company investors since investment companies are already subject to extensive regulation, which is designed to address many of the same criticisms that have been voiced about roll-up transactions. Moreover, we noted that business combination transactions involving investment companies have not been the subject of any investor complaints about roll-up transactions. The Institute also commented that the proposed disclosure requirements should not be applicable to investment companies since they already deliver comprehensive and readable disclosure regarding business combination transactions. Even if the SEC disagrees with our position regarding the adequacy of disclosure, we urged the SEC not to apply the proposed requirements on investment companies since several of the specific items in the proposal are inapplicable to most investment companies. We will keep you informed of developments. Amy B.R. Lancellotta
Assistant General Counsel Attachment