

**MEMO# 15678**

February 21, 2003

## **INSTITUTE COMMENT LETTER REGARDING REPURCHASES OF STOCK UNDER RULE 10B-18**

[15678] February 21, 2003 TO: SEC RULES COMMITTEE No. 19-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 12-03 RE: INSTITUTE COMMENT LETTER REGARDING REPURCHASES OF STOCK UNDER RULE 10b-18 The Institute has prepared the attached comment letter on the Commission's proposed amendments to Rule 10b-18 under the Securities Exchange Act of 1934, the rule that provides issuers with a safe harbor from liability for manipulation when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions.\* The letter is very similar to the draft previously circulated to you and is briefly summarized below. • Timing of Purchases. The letter supports permitting issuers of highly liquid securities to repurchase their securities up to ten minutes (rather than the current thirty minutes) before the close of trading. The letter states that the proposed ten-minute standard (together with the other requirements of Rule 10b-18) would adequately protect against an issuer affecting the closing price of its securities. In addition, the letter states that it is important to continue to provide issuers with such a bright-line standard to determine their eligibility for the safe harbor. • Volume of Purchases. The letter states the Institute's concern that including block purchases in Rule 10b-18 volume limitations would significantly limit the ability of closed-end funds to repurchase their securities and recommends that closed-end funds continue to be permitted to implement their repurchase programs under Rule 10b-18 by effecting block purchases. In particular, the letter recommends that, for closed-end funds, the Commission continue to exclude block purchases from Rule 10b-18's volume limitations. Alternatively, the letter recommends that closed-end funds be permitted to purchase up to a daily aggregate amount of 10,000 shares. In addition, the letter recommends that the Commission gather and analyze data on the effect of eliminating the block \* See Memorandum to SEC Rules Members No. 113-02, Closed-End Investment Company Members No. 68-02, dated December 18, 2002. 2 exception for all issuers before determining to eliminate Rule 10b-18's exception for block purchases. • Rule 10b-18 Alternative Conditions. The letter supports the proposed amendment that would raise Rule 10b-18's volume limitations in the case of severe market declines from 25% of average daily trading volume ("ADTV") to 100% of ADTV for that security. • Disclosure. The letter states the Institute's belief that it is unnecessary and inappropriate to require closed-end funds to provide information about repurchases on three different forms -- Forms N-23C-1, N-SAR, and N-CSR. The letter therefore recommends that the Commission eliminate Form N-23-C-1 and no longer require closed-end funds to provide disclosure regarding repurchases on Form N-SAR. The letter supports requiring funds to make disclosure regarding repurchases on Form N-CSR semi-annually, as proposed. It states that such

disclosure will adequately inform the market with respect to the repurchase activity of closed-end funds. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)

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