

MEMO# 3067

September 6, 1991

SEC STAFF ISSUES RELIEF UNDER SECTION 16 OF THE EXCHANGE ACT TO A CONTROLLING PERSON OF INVESTMENT ADVISORY ENTITIES

September 6, 1991 TO: SEC RULES MEMBERS NO. 45-91 CLOSED-END FUND MEMBERS NO. 38-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 37-91 SECTION 16 TASK FORCE RE: SEC STAFF ISSUES RELIEF UNDER SECTION 16 OF THE EXCHANGE ACT TO A CONTROLLING PERSON OF INVESTMENT ADVISORY ENTITIES

The SEC staff issued the attached no-action letter providing relief from the filing requirements under Section 16 of the Securities Exchange Act to an individual who is a controlling shareholder of a holding company, which has two investment management and advisory subsidiaries. One of the subsidiaries serves as investment manager to a group of registered investment companies and the other subsidiary serves as investment manager and, in some cases, trustee for employee benefit account assets. By virtue of the individual's control of the subsidiaries, he may be deemed to have beneficial ownership of the securities beneficially owned by the subsidiaries. Thus, unless the individual is eligible for an exemption from the filing requirements under Rule 16a-1, he must file ownership reports for every company in which the funds or accounts managed by the subsidiaries own more than 10% of an issuer's outstanding equity securities. Under Rule 16a-1, entities entitled to file on Schedule 13G pursuant to Rule 13d-1 are not deemed, for purposes of Section 16, beneficial owners of securities held for the benefit of third parties or in customer or fiduciary accounts. Rule 13d-1 provides that a parent holding company may report beneficial ownership on Form 13G "provided the aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries [not eligible to report on Schedule 13G], does not exceed one percent of the securities of the subject class." The SEC staff has taken the position that where the controlling person is an individual rather than a parent holding company, the individual, if otherwise eligible, may report beneficial ownership on Schedule 13G where the individual and the other controlled non-13G eligible holders own less than one percent, in the aggregate, of a company's outstanding equity securities. While the staff has given no-action advice relating to individual controlling shareholders for purposes of Section 13(d) and Schedule 13G, no such comparable advice exists under the filing requirements of Section 16 and the rules thereunder. The staff confirmed that where a controlling shareholder is an individual rather than a holding company, the individual is not required to file reports under Section 16(a) of the Exchange Act if (1) the individual is properly filing on Schedule 13G pursuant to the staff's position with respect to individual controlling

shareholders and (2) the securities held by the persons listed in Rule 16a-1 (i.e., those entities eligible to report on Schedule 13G) are held for the benefit of third parties or in customer or fiduciary accounts. In May, the staff declined to confirm that a controlling shareholder who is an individual is not deemed a beneficial owner for purposes of Section 16. (See Memorandum 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, dated May 13, 1991.) The staff distinguished the earlier letter on the basis that the incoming letter to the staff stated that the individual was permitted to file on Schedule 13G but did not indicate that the individual was properly filing on Schedule 13G, which was represented with respect to the individual in the subsequent letter. Amy B.R. Lancellotta Assistant General Counsel Attachment

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