

MEMO# 3981

August 6, 1992

SEC PROPOSES EXEMPTIVE RULES CONCERNING INVESTMENT COMPANIES ORGANIZED IN LIMITED PARTNERSHIP FORM

August 6, 1992 TO: SEC RULES COMMITTEE NO. 57-92 CLOSED-END FUND COMMITTEE NO. 14-92 RE: SEC PROPOSES EXEMPTIVE RULES CONCERNING INVESTMENT COMPANIES ORGANIZED IN LIMITED PARTNERSHIP FORM

The Securities and Exchange Commission has issued for public comment proposed rules under the Investment Company Act of 1940 that would (1) conditionally exempt certain directors of an investment company organized as a limited partnership from the definition of "interested person" under the Act and (2) exempt limited partners of such an investment company from the definition of "affiliated person" under the Act. The objective of the proposed rules is to eliminate the need for investment companies organized in limited partnership form to seek exemptive orders from the Commission for these purposes. A copy of the proposing release is attached. Currently, "interested person" and "affiliated person" are defined in the Act in such a way that an investment company organized as a limited partnership cannot have independent directors, as required by Section 10(a) of the Act and Section 56(a) of the business development company provisions of the Act. This is the case because the definition of "affiliated person" of an investment company includes a "partner," directors of limited partnership investment companies are general partners of the investment company (and therefore are affiliated persons thereof), and the definition of "interested person" of an investment company includes any affiliated person of the investment company. Proposed Rule 2a19-2 would exempt general partners serving as directors of limited partnership investment companies from the definition of "interested person" in Section 2(a)(19) of the Act, subject to certain conditions designed to ensure that the general partners are accountable to the investment company to the same degree as corporate directors would be and that limited partners of the investment company have protections that are essentially equivalent to those afforded to shareholders of a corporation. Proposed Rule 2a3-1 would address another problem peculiar to investment companies organized as limited partnerships. Currently, limited partners of a limited partnership investment company fall within the definition of an "affiliated person" even if they do not own, control or hold five percent or more of the investment company's outstanding voting securities or have some other statutory affiliation. To eliminate this discrepancy between such limited partners and shareholders of an investment company organized in corporate or business trust form, the proposed rule would exempt limited partners of a limited partnership

investment company from the definition of "affiliated person" in Section 2(a)(3) of the Act if they are "affiliated persons" solely because of their status as limited partners of the investment company. Comments on the proposed rules must be filed within 60 days after publication of the attached release in the Federal Register. If there are issues you would like the Institute to consider raising in a comment letter, please call me at (202) 955-3514 by Wednesday, August 26. Frances M. Stadler Assistant Counsel Attachment

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