The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 8932

May 27, 1997

INSTITUTE AMICUS CURIAE MEMORANDUM URGING RECONSIDERATION OF DISTRICT COURT HOLDING IN STROUGO CASE

* See Memorandum to SEC Rules Members No. 37-97 and Closed-End Investment Company Members No. 15-97, dated May 16, 1997. May 27, 1997 TO: BOARD OF GOVERNORS No. 34-97 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 21-97 SEC RULES COMMITTEE No. 54-97 RE: INSTITUTE AMICUS CURIAE MEMORANDUM URGING RECONSIDERATION OF DISTRICT COURT HOLDING IN STROUGO CASE

_____ The Institute, as amicus curiae, has submitted the attached memorandum to the U.S. District Court for the Southern District of New York, urging it to grant reargument or reconsideration of its opinion in Strougo or, in the alternative, to certify the opinion for interlocutory appeal to the Court of Appeals for the Second Circuit. In Strougo, the District Court ruled that a shareholder bringing a derivative action in connection with an allegedly "coercive" rights offering by a closed-end fund was not required to make demand on the funds directors prior to bringing the suit because three of the four independent directors of the fund "received substantial compensation" in connection with their service on multiple fund boards within the same complex.* The Institutes memorandum notes that pooled or clustered board structures are standard in the industry and help assure efficient and knowledgeable fund governance in accordance with the requirements of the Investment Company Act. (In support of these points, the Institute submitted an affidavit of Don Boteler, Vice President - Operations and Training, setting forth certain findings from the Institutes 1994 survey of independent directors.) The memorandum argues that the courts opinion would require fund boards to radically change these structures or face the threat of constant litigation. (Indeed, we were advised that a similar suit has just been filed against another closed-end fund by the same plaintiff represented by the same plaintiffs lawyers.) This would undermine the system of corporate governance for funds established by Congress. The memorandum notes that the decision is unprecedented in that neither the SEC nor any court has regarded service on multiple boards or the receipt of fees in connection therewith to compromise the independence of fund directors. The memorandum also notes that the courts decision is likely to have nationwide impact. The fund in question was organized as a Maryland corporation, which is the 2jurisdiction of choice for funds operating in corporate form. Moreover, a decision out of the Southern District of New York likely would be applied in other jurisdictions as well. We will keep you informed of further developments. In the meantime, should you have questions concerning the case, please contact Paul Stevens at 202/326-5810 or Craig Tyle at 202/326-5815. Matthew P. Fink President Attachment