

MEMO# 8090

July 26, 1996

INSTITUTE SUPPLEMENTAL COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17F-5

1 See Memorandum to Closed-End Fund Committee No. 39-95, International Committee No. 20-95, SEC Rules Committee No. 88-95, Unit Investment Trust Committee No. 60-95, Rule 17f-5 Ad Hoc Subcommittee, dated August 1, 1995. July 26, 1996 TO: ACCOUNTING/TREASURERS COMMITTEE No. 31-96 CLOSED-END FUND COMMITTEE No. 21-96 INTERNATIONAL COMMITTEE No. 25-96 SEC RULES COMMITTEE No. 79-96 UNIT INVESTMENT TRUST COMMITTEE No. 30-96 RULE 17f-5 AD HOC SUBCOMMITTEE RE: INSTITUTE SUPPLEMENTAL COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 17f-5

As we previously informed you, the Securities and Exchange Commission proposed amendments to Rule 17f-5 under the Investment Company Act of 1940, the rule that governs the custody of investment company assets outside of the United States.¹ The Commission has not yet taken any formal action on that proposal. Attached is a supplemental comment letter filed by the Institute that responds to a letter filed recently with the Commission on behalf of a coalition of custodian banks (a copy of which also is attached). The Coalitions letter reiterates their view that to the extent that the Commission permits mutual fund directors to delegate certain responsibilities regarding foreign custody of fund assets to U.S. bank custodians, it should not permit the delegation of country-wide custodial risk determinations. They argue that this determination is really part of the decision to invest in a given country. The Institutes letter to the Commission, in response, asserts that country-wide custodial risk can be differentiated from investment risk and, in fact, the Investment Company Act of 1940 establishes specific standards with respect to custody of mutual fund assets. In contrast, there are no comparable requirements in the Investment Company Act concerning investment risks. It also argues that U.S. bank custodians should be permissible delegates because they often are in the best position to evaluate country-wide custodial risk factors. Finally, the letter points out that the Commissions proposal would not mandate that U.S. bank custodians become delegates and that it is difficult to understand the public policy served by precluding all U.S. bank custodians from agreeing to make the relevant determinations. Dorothy M. Donohue Assistant Counsel Attachments