

MEMO# 4802

May 19, 1993

SEC PROPOSES TO EXCEPT RULE 144A DISTRIBUTIONS FROM APPLICATION OF SECURITIES EXCHANGE ACT TRADING RULES

May 19, 1993 TO: INTERNATIONAL COMMITTEE NO. 12-93 SEC RULES COMMITTEE NO. 48-93 RE: SEC PROPOSES TO EXCEPT RULE 144A DISTRIBUTIONS FROM APPLICATION OF SECURITIES EXCHANGE ACT TRADING RULES

The Securities and Exchange Commission has proposed amendments to Rules 10b-6, 10b-7 and 10b-8 under the Securities Exchange Act of 1934 that would except distributions of securities of foreign issuers pursuant to Rule 144A under the Securities Act of 1933 from the prohibitions of these rules. The proposed exceptions are intended to facilitate distributions of foreign securities in the U.S. to institutional investors. Rules 10b-6, 10b-7 and 10b-8 are trading rules designed to protect investors from paying a price for a security in distribution that has been artificially raised or supported by any person participating in the distribution. Rule 10b-6, among other things, prohibits issuers, underwriters and others participating in a distribution from bidding for or purchasing the security being distributed until their participation in the distribution is complete. Rule 10b-7 generally prohibits transactions designed to stabilize the price of a security in order to facilitate the offering of the security. Rule 10b-8 applies to any person participating in a distribution of securities being offered through rights issued on a pro-rata basis to securities holders, and places restrictions on the prices at which rights may be purchased and the securities sold. Since the trading rules were adopted, the Commission has taken the position that in the case of a distribution of foreign securities in the U.S., the rules apply to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions. Rule 144A, adopted in 1990, provides a non-exclusive safe harbor from the registration requirements of the Securities Act for resales of eligible restricted or unregistered securities to qualified institutional buyers. Where Rule 144A sales constitute a "distribution" for purposes of Rule 10b-6, the prohibitions of the trading rules apply. As the SEC release notes, it has been argued that the application of the trading rules to the non-registered distribution of foreign securities to institutional - 1 - investors in the U.S. may interfere with customary foreign business practices, and cause foreign issuers to avoid the U.S. market. In response to these concerns, the SEC has granted a number of individual and class exemptions from the trading rules. The Commission now proposes to amend each rule to permit non-compliance with the trading rules with respect to distributions of Rule 144A-eligible foreign securities if such securities are sold in the U.S. solely to qualified institutional buyers in transactions exempt from registration under Section 4(2) of or Rule 144A or Regulation D under the

Securities Act. The Commission release solicits the comments of all interested parties, particularly qualified institutional buyers, regarding the proposed exceptions. A copy of the proposing release is attached. Comments are due to the SEC on or before June 29, 1993. Please forward any comments or concerns that you may have to the undersigned no later than June 4, 1993 for inclusion in a possible Institute comment letter. I can be reached at 202/955-8419 or by fax at 202/659-1519. Angela C. Goelzer Associate Counsel - International Attachment

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