

MEMO# 9735

March 4, 1998

INSTITUTE LETTER TO SEC STAFF REQUESTING MODIFICATION OF DIRECTORS' RESPONSIBILITIES REGARDING REPURCHASE AGREEMENTS

1 See SEC Rules Committee No. 7-98, dated February 9, 1998. [9735] March 4, 1998 TO: SEC RULES COMMITTEE No. 21-98 RE: INSTITUTE LETTER TO SEC STAFF REQUESTING MODIFICATION OF DIRECTORS' RESPONSIBILITIES REGARDING REPURCHASE AGREEMENTS

The Institute has submitted a letter to the Division of Investment Management requesting modification of fund directors' responsibilities regarding repurchase agreements ("repos"). The letter is substantially similar to the draft letter we previously circulated to you, which was discussed at last month's SEC Rules Committee meeting.¹ A copy of the letter is attached, and significant aspects of it are summarized below. The letter requests the staff to eliminate its stated requirement that mutual fund boards institute, and perform annual reviews of the advisers' compliance with, special procedures for repos. The letter explains that this requirement inevitably and inappropriately leads directors either to "micro-manage" operational matters or else to engage in a merely ritualistic function, the level of involvement of which is an ineffective use of the board's time and limited resources. The letter emphasizes that repo transactions generally are viewed as among the safest of investments and do not present any greater risk to the fund than many other fund investments. Further, the letter notes that the staff does not require fund boards to institute special procedures in connection with a fund's investments in other portfolio securities. As such, there is no justification for imposing these requirements in connection with a fund's investments in repos. The letter asserts that the basis for the staff's concerns underlying the repo requirements (i.e., that a fund would be unable to liquidate collateral securities upon the insolvency of a repo counterparty) has effectively been reduced by, among other things, amendments to: (i) the Bankruptcy Code, (ii) the rules governing FDIC receiverships, and (iii) the policies established by the Securities Investor Protection Corporation. The letter also states that our request is consistent with the Commission's goal of reducing unnecessary burdens on fund directors in order to improve investment company governance. Barry E. Simmons Assistant Counsel Attachment