

MEMO# 4647

March 30, 1993

SEC PROPOSES EXPEDITED REVIEW PROCEDURES FOR CERTAIN EXEMPTIVE APPLICATIONS

March 30, 1993 TO: SEC RULES COMMITTEE NO. 28-93 RE: SEC PROPOSES EXPEDITED REVIEW PROCEDURES FOR CERTAIN EXEMPTIVE APPLICATIONS

The Securities and Exchange Commission has proposed for public comment an amendment to Rule 0-5 under the Investment Company Act of 1940 that would establish an expedited review procedure for certain exemptive applications. In addition, the Commission has proposed an amendment to Rule 30-5 under the Act to expand the delegated authority of the Director of the Division of Investment Management. These amendments would implement the staff's recommendations made in its report on reform of the 1940 Act. A copy of the release is attached. Specifically, the proposed amendment to Rule 0-5 would allow certain applicants to receive an exemptive order within 90 days of filing an application. The expedited review procedures would be available only to applicants who are seeking relief that is consistent in all material respects with the "most recent order" issued on applications for the same relief. The rule defines "most recent order" as an order that was issued at least thirty days and not more than two years preceding the filing of the application seeking expedited review. Applicants seeking expedited review would be required to include in their applications each condition and each material representation included in the final version of the most recent precedential application. In addition, an application would have to include, among other things, a copy of the application marked to show all changes from the application that was granted by the most recent order submitted as precedent and a statement signed by counsel representing that the application meets each of the requirements of subparagraph (b)(1) of amended Rule 0-5. As you may recall, the Institute sent a letter to the staff urging the adoption of a procedure for the automatic issuance of orders after a stated period of time, which we initially suggested in our comment letter on the 1940 Act study release. (See Memorandum to SEC Rules Committee No. 69-92, dated September 11, 1992.) The Commission states in the release that it objects to an automatic exemptive procedure for several reasons, including its concern that the passive granting of exemptive relief could be inconsistent with the limitation in Section 6(c) that the Commission grant an exemption only if it is necessary or appropriate in the public interest and consistent with the protections of investors and other purposes intended by the Act. The proposal to expand the Director's delegated authority would amend Rule 30-5 to grant delegated authority with respect to all sections of the 1940 Act and Investment Advisers Act, except as specifically limited. In addition, the amendments would incorporate a new concept of discretion so that the Division Director generally could issue notices and orders under all provisions of those Acts if the matter did not appear to present significant issues not previously settled by the

Commission, or to raise questions of fact or policy indicating that the public interest or the interest of investors warranted consideration of the matter by the Commission. The Commission has solicited comment on a number of aspects of the proposed expedited review procedures. Comments are due within 90 days after the date the release is published in the Federal Register. Please provide me with your comments on the proposal by May 14, 1993. My direct number is 202/955-3523 and our fax number is 202/659-1519.
Amy B.R. Lancellotta Associate Counsel Attachment

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