

MEMO# 1739

February 28, 1990

ADOPTION OF RULE 12D1-1

February 28, 1990 TO: CLOSED-END FUND MEMBERS NO. 11-90 SEC RULES MEMBERS NO. 17-90 UNIT INVESTMENT TRUST MEMBERS NO. 15-90 INTERNATIONAL FUNDS TASK FORCE NO. 3-90 RE: SEC ADOPTS RULE 12d1-1, REMOVING RESTRICTIONS ON PURCHASES OF SECURITIES OF FOREIGN BANKS AND INSURANCE COMPANIES

The SEC has adopted Rule 12d1-1, which removes restrictions on registered investment companies purchasing securities of foreign banks and foreign insurance companies. (A copy of the release is attached.) Rule 12d1-1 was proposed by the Commission last July. The Institute filed a comment letter supporting adoption of the Rule and recommending that it be broadened in certain areas. Many of the Institute's comments were reflected in the final Rule. As adopted, the Rule exempts foreign banks and foreign insurance companies and finance subsidiaries thereof from the definition of "investment company" for purposes of Section 12(d)(1)(A) of the 1940 Act, which imposes limitations on the purchase by registered investment companies of shares of other investment companies. (Although "banks" and "insurance companies" are specifically excluded from the definition of "investment company" in Section 3(c)(3) of the 1940 Act, those terms do not include foreign banks and foreign insurance companies. Similarly, Rule 3a-5 exempts certain finance subsidiaries from the definition of an investment company, but does not cover finance subsidiaries of foreign banks and insurance companies.) Rule 12d1-1 applies to purchases of both equity and debt securities, but only to direct interests in or obligations of a foreign bank or foreign insurance company or a finance subsidiary of a foreign bank or foreign insurance company. Interests in other entities organized under the auspices of a foreign bank or foreign insurance company such as collective trusts or separate accounts are not covered by the Rule. In addition, registered investment companies' acquisitions of securities of foreign insurance companies would remain subject to the limitations on acquisitions of domestic insurance companies' securities imposed by Section 12(d)(2) of the 1940 Act. The Rule applies to foreign banks as defined in Rule 6c-9 under the 1940 Act. As recommended by the Institute in its comment letter, the final Rule uses the less restrictive of two alternative definitions of "foreign insurance company" set forth in the release proposing the Rule. The applicable definition requires that the issuer be regulated as an insurance company by the appropriate government authority and primarily engaged in the writing of insurance agreements of the type specified in Section 3(a)(8) of the 1933 Act, but does not contain an additional condition governing the risk characteristics of such agreements. In addition, as the Institute proposed in its comment letter, Rule 12d1-1 as adopted specifically encompasses finance subsidiaries of foreign banks and foreign insurance companies that would otherwise satisfy the conditions of Rule 3a-5. The Rule takes effect thirty days after the date of its publication in the Federal Register. Frances M. Stadler Assistant General Counsel Attachment

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