

MEMO# 1265

July 17, 1989

REPROPOSED REGULATION S

July 17, 1989 TO: SEC RULES COMMITTEE NO. 38-89 INTERNATIONAL FUNDS TASK FORCE
NO. 4-89 CLOSED-END FUND COMMITTEE NO. 26-89 UNIT INVESTMENT TRUST COMMITTEE
NO. 34-89 RE: REPROPOSED REGULATION S

The SEC has repropose in the attached release Regulation S, which is intended to clarify the application of the registration requirements under the Securities Act of 1933 to offshore transactions. As originally proposed, the safe harbors under the Regulation would continue to impose two general conditions. However, with respect to the first condition that the offer or sale of securities be made in an "offshore transaction," the definition of an "offshore transaction" has been broadened to include designated organized foreign securities markets. In addition, the second condition that no "directed selling efforts" be made in the U.S. has been modified to emphasize that the prohibition relates only to activities intended to result in general preconditioning of the U.S. market. Several changes have also been made to the terms and conditions under the safe harbors. A significant change has been made to the definition of a "U.S. person." As recommended by the Institute in its comment letter, the revised definition would not include investment advisers or other professional fiduciaries located in the U.S. if the beneficial owner of the security was not a U.S. person. (See Memorandum to SEC Rules Committee No. 73-88 and International Funds Task Force No. 12-88, dated December 5, 1988.) However, any transaction with a fiduciary would still have to be made outside the U.S. to be eligible to rely on the safe harbors under the Regulation. In addition, two of the categories of issuers included in the safe harbors under the Regulation have been slightly expanded. Under the reproposal, the first category would extend to all foreign issuers with no substantial U.S. market interest, regardless of their reporting status. The second category, as revised, would include all reporting issuers and debt securities offered and sold by foreign issuers regardless of their reporting status. The third residual category, which imposes the most conditions for eligibility under the safe harbor, would be available for all issuers offering securities, including non-reporting U.S. issuers and non-reporting foreign issuers offering equity securities with a substantial U.S. market interest. The resale safe harbor has also been modified. As revised, the resale safe harbor would impose restrictions beyond the general conditions discussed above only where the securities were sold by a dealer or other person receiving a selling concession, fee or other remuneration. The revised resale safe harbor also would permit resales of any securities on established foreign securities exchanges and designated organized foreign securities market if the selling dealer did not know that the buyer was a U.S. person. The comment period for the repropose Regulation ends on September 12, 1989. Please provide me with any comments you may have on the reproposal by August 18, 1989. Amy B. Rosenblum Assistant General Counsel Attachment

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.