

MEMO# 8573

January 22, 1997

INSTITUTE'S DRAFT COMMENT LETTER ON PROPOSED PRIVATE INVESTMENT COMPANY RULES

* See Memorandum to SEC Rules Committee No. 134-96 (Dec. 20, 1996). January 22, 1997
TO: SEC RULES COMMITTEE No. 9-97 RE: INSTITUTE'S DRAFT COMMENT LETTER ON
PROPOSED PRIVATE INVESTMENT COMPANY RULES

As we previously informed you, the Securities and Exchange Commission issued for public comment several new rules under the Investment Company Act of 1940 that relate to the new exception for private investment companies that consist solely of certain financially sophisticated persons or so-called "qualified purchasers."* A draft of the Institutes comment letter on the proposal is attached and summarized below. (Please note that the draft references several appendices which are not attached. We will send these out with the final letter and otherwise make them available upon request.) The letter points out that the Commission should act cautiously in implementing the new exemption because of the potential dangers to the investing public and to the markets from the sale of unregulated pooled investment vehicles. The letter also strongly encourages the Commission to address two matters that are not discussed in detail in the proposing release -- the meaning of the prohibition on public offerings and the meaning of the limitation on investments in Section 3(c)(7) pools to qualified purchasers including, in particular, that defined contribution plans only would be permitted to invest in the qualified purchaser pools if all plan participants were themselves qualified purchasers. The letter supports a narrower definition of "investments" than that proposed by the Commission. Specifically, the letter supports including securities and commodity interests held for investment purposes and supports excluding most real estate, all physical commodities, and most cash and cash equivalents. (The letter supports including as investments interests in real estate that are held in the form of a security and cash and cash equivalents that represent proceeds from a recent sale of investments.) The letter also supports the proposed exclusion of indebtedness incurred to acquire investments and the proposed deduction of payments received by any person during the preceding twelve months under an insurance policy, as a gift, or because of a divorce. In addition, the letter supports requiring a purchaser to provide documentation regarding his or her ownership of investments and requiring that an issuers reliance on such information be reasonable. Finally, the letter opposes the proposed safe harbor from integration for sponsors of any Section 3(c)(1) fund who converts it to a 3(c)(7) fund and then forms a new Section 3(c)(1) fund. The letter must be filed with the Commission by February 10th. Therefore, please provide me with your comments on the draft letter by noon on January 30, 1997 by phone at 202/326-5821, fax at 202/326-5827 or e-mail at

donohue@ici.com. Dorothy M. Donohue Assistant Counsel Attachment (in .pdf format)

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