

**MEMO# 5236**

October 19, 1993

## **DRAFT LETTER TO SEC STAFF RE APPLICATION OF RULE 12D3-1 TO REPURCHASE AGREEMENTS**

October 19, 1993 TO: SEC RULES COMMITTEE NO. 92-93 RE: DRAFT LETTER TO SEC STAFF  
RE APPLICATION OF RULE 12d3-1 TO REPURCHASE AGREEMENTS

Attached is a draft letter to the SEC's Division of Investment Management regarding the application of Rule 12d3-1 to fully-collateralized repurchase agreements that comply with the standards set forth in Investment Company Act Rel. No. 13005 (February 2, 1983). Specifically, our letter would request staff confirmation that a repurchase agreement that complies with the Release is not subject to Rule 12d3-1 and need not be included in calculating compliance with the quantitative limits in subparagraphs (b)(1)-(b)(3). The impetus for our draft request is the recent amendment of Rule 12d3-1, which eliminated the "quality" standards in subparagraphs (b)(4) and (b)(5) that any equity security acquired be a margin security as defined by Federal Reserve Board Regulation T and that any debt security acquired be investment grade as determined by the fund's board of directors. Rule 12d3-1 as amended thus permits a fund to purchase an unsecured obligation of a broker-dealer without any creditworthiness determination. Such a purchase would be treated as an investment in securities issued by a broker-dealer and therefore subject to the quantitative limits in subparagraphs (b)(1) - (b)(3). Our draft submission would request that the staff confirm that a repurchase agreement in compliance with the Release (e.g. fully-collateralized and subject to a creditworthiness determination) should be treated as an investment in the underlying securities collateralizing the repurchase agreement rather than an investment in securities of the counterparty to the agreement. Thus, a repurchase agreement in compliance with the Release should not be subject to the quantitative limits of Rule 12d3-1. Further, we would request that the staff confirm that a repurchase agreement not in compliance with the Release should be treated as an investment in the securities of a broker-dealer subject to Rule 12d3-1. In order that we may submit this letter to the SEC staff as soon as possible, please submit any comments to the undersigned no later than COB on Tuesday, October 26. The draft letter also will be discussed at the SEC Rules Committee meeting on October 19. Angel C. Goelzer Associate Counsel