

MEMO# 1405

September 14, 1989

INSTITUTE FILES COMMENT LETTER ON REPROPOSED REGULATION S

September 14, 1989 TO: SEC RULES MEMBERS NO. 49-89 UNIT INVESTMENT TRUST COMMITTEE NO. 61-89 INTERNATIONAL FUNDS TASK FORCE NO. 12-89 CLOSED-END FUND COMMITTEE NO. 38-89 RE: INSTITUTE FILES COMMENT LETTER ON REPROPOSED REGULATION S _____ Attached is the Institute's comment letter filed with the Securities and Exchange Commission on repropoed Regulation S, which is intended to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933 (the "1933 Act"). (See Memorandum to SEC Rules Committee No. 38-89, International Funds Task Force No. 4-89, Closed-End Fund Committee No. 26-89 and Unit Investment Trust Committee No. 34- 89, dated July 17, 1989.) The Institute recommended in its letter that the Commission codify the no-action position of the staff of the Division of Corporation Finance that, under certain circumstances, private placement offerings by foreign issuers in the U.S. will not be integrated with public offerings concurrently being made abroad. See College Retirement Equities Fund (June 4, 1987) and College Retirement Equities Fund (March 20, 1987). If this position were codified, foreign issuers should then have adequate assurance that the registration requirements of the 1933 Act will not be triggered and, thus, will no longer be reluctant to make such offerings. The Institute also requested the Commission to clarify its position as to whether the presence abroad of an officer or partner of a U.S. corporation or partnership would satisfy the requirement under the definition of "offshore transaction" that the buyer be outside the U.S. With respect to U.S. investment companies, the Institute recommended that a fund's foreign custodian or investment adviser located abroad be permitted to act as an agent of the fund to satisfy the requirements under the definition of an "offshore transaction." - 2 - Finally, the Institute suggested that the definition of "U.S. person" be modified to exclude any discretionary rather than custodial account held by a fiduciary for a non-U.S. person. We will keep you informed of developments. Amy B. Rosenblum Assistant General Counsel

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