

MEMO# 4379

January 4, 1993

RULE 17F-5

January 4, 1993 TO: SEC RULES COMMITTEE NO. 2-93 INTERNATIONAL COMMITTEE NO. 1-93
RE: RULE 17f-5 _____ As you know, in September the Institute formed an ad hoc subcommittee of interested members of the SEC Rules Committee and the International Committee to develop proposed revisions to Rule 17f-5, the rule under the Investment Company Act that permits fund assets to be held in foreign custody. This project was undertaken in response to staff recommendations in the May, 1992 Report Protecting Investors: A Half Century of Investment Company Regulation stating that it would be appropriate to reduce the role of the board of directors to one of general oversight of business decisions made by a fund's investment adviser or primary custodian. The subcommittee met on September 10 and November 20, and has developed the attached proposal, which addresses the role of directors in foreign custody decisions. Under our proposal, the board of directors would be able to delegate the selection of foreign custodians and management of the arrangements to the fund's adviser or U.S. custodian. Delegation would be subject to a number of conditions designed to ensure the board's ability to exercise meaningful oversight of the decisions made by these parties, including board a) approval of the procedures to be used by the delegate to select an eligible foreign custodian, b) receipt of representations from its delegate regarding the terms of the foreign custody contract, the safekeeping procedures to be used by the foreign custodian, and the existence of indemnification or insurance to protect against loss of assets, and c) receipt of reports from its delegate regarding the foreign custody arrangements. As noted above, the Institute's submission to the staff only addresses the issue of board responsibilities under the rule. Subcommittee members have identified other concerns with the rule that will be raised either informally with the SEC staff or in a future submission. The subcommittee will continue to meet to develop proposed revisions to the rule's definition of "eligible foreign custodian." - 1 - The Institute plans to submit the attached proposal to the staff no later than January 15, 1993. Please forward any comments to the undersigned no later than close of business on Tuesday, January 12. I can be reached at (202) 955-8419 or by fax at (202) 659-1519. We will keep you informed of developments. Angela C. Goelzer Associate Counsel - International Attachment

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