

**MEMO# 907**

January 4, 1989

## **ICI COMMENTS ON PROPOSED REGULATION S**

January 4, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 1-89 RE: ICI COMMENTS ON PROPOSED REGULATION S \_\_\_\_\_ The Institute filed the attached comment letter with the SEC on its proposed Regulation S intended to clarify the applicability of the registration requirements of the Securities Act of 1933 to offshore transactions. Our comment letter notes that U.S. investment companies and advisers owning securities of certain foreign issuers have been denied, due to uncertainty regarding the applicability of the 1933 Act, certain ownership-related benefits such as participation in rights offerings, warrants, and dividend reinvestment plans. The Institute, therefore has requested that the Commission adopt an exclusion for such transactions when they relate to the foreign security holdings of U.S. institutional investors. The Institute also commented that the presence of a U.S. person as fiduciary to accounts of non-U.S. persons should not, by itself, cause an offer or sale to be deemed an offer or sale to a U.S. person. For example, under the proposal an offer or sale to a U.S. resident adviser purchasing for a fund located offshore and sold only to non-U.S. persons might nonetheless be deemed an offer or sale to a U.S. person because of the U.S. status of the adviser. The proposal expressly excludes offshore sales by investment companies. The Institute disagrees with the reasons stated in the release for this exclusion, but reserves the right to later address the appropriateness of applying 1933 Act registration requirements to offshore sales by investment companies. We will keep you posted of any further developments. Susan P. Hart Assistant General Counsel Attachment

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