

**MEMO# 1008**

February 27, 1989

## **SEC NO ACTION UNDER SECTION 12(D)(1) OF THE 1940 ACT REGARDING FUND INVESTMENT IN CERTAIN SECURITIES OF FOREIGN BANKS**

February 27, 1989 TO: SEC RULES MEMBERS NO. 15-89 INTERNATIONAL FUNDS TASK FORCE NO. 1-89 RE: SEC NO ACTION UNDER SECTION 12(d)(1) OF THE 1940 ACT REGARDING FUND INVESTMENT IN CERTAIN SECURITIES OF FOREIGN BANKS

The SEC's Division of Investment Management has responded to an Institute request regarding investment in foreign banks that might be deemed investment companies stating that the Division would not recommend enforcement action under Section 12(d)(1)(A)(iii) of the 1940 Act if a registered investment company invests more than 10 percent of the value of its assets in securities of other investment companies solely by reason of including in this calculation the value of certain debt securities and non-voting preferred stock issued by foreign banks. For purposed of the letter, the definition of foreign bank is the same as in 1940 Act Rule 6c-9(b)(2). The Institute requested this relief because foreign banks, unlike domestic banks, are not exempted from the definition of investment company under the 1940 Act, and thus fund investment in securities of those foreign banks that fall under the definition of "investment company" would be subject to the investment limitations of Section 12(d)(1) of the 1940 Act. The Institute requested relief only from subparagraph (iii), which restricts fund investment in the aggregate in other investment companies to no more than a total of 10 percent of the acquiring fund's assets, and not from subparagraphs (i) and (ii), which restrict fund investment in any one investment company. The Division states that in giving no action assurance under Section 12(d)(1)(A)(iii) it is expressing no opinion under Section 12(d)(3) with respect to investment in the securities of a foreign bank that might also be a broker, dealer, registered investment adviser, or underwriter. In addition, the letter states that the staff is working on a rule proposal under Section 12(d)(1). If the Commission were to adopt such a rule, it might supersede this no action response. Both our request letter and the Division's response are attached. We will keep you informed of further developments. Susan P. Hart Assistant General Counsel Attachments