

MEMO# 2988

August 2, 1991

SEC STAFF MODIFIES ITS POSITION ON THE INTERPRETATION OF "BENEFICIAL OWNERSHIP" UNDER RULE 17J-1 OF THE 1940 ACT AND RULE 204-2 OF THE ADVISERS ACT

August 2, 1991 TO: SEC RULES MEMBERS NO. 41-91 CLOSED-END FUND MEMBERS NO. 34-91 UNIT INVESTMENT TRUST MEMBERS NO. 31-91 INVESTMENT ADVISER MEMBERS NO. 32-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 31-91 RE: SEC STAFF MODIFIES ITS POSITION ON THE INTERPRETATION OF "BENEFICIAL OWNERSHIP" UNDER RULE 17j-1 OF THE 1940 ACT AND RULE 204-2 OF THE ADVISERS ACT

The SEC staff issued the attached letter modifying its position, expressed in a recent interpretive letter to the Institute, on the definition of "beneficial ownership" under Rule 17j-1(c)(1) of the Investment Company Act and Rule 204-2(a)(12) and (13) of the Investment Advisers Act. (See Memorandum to SEC Rules Members No. 36-91, Closed-End Fund Members No. 25-91, Unit Investment Trust Members No. 23-91, Investment Adviser Members No. 23-91 and Investment Adviser Associate Members No. 23-91, dated June 17, 1991.) In its initial letter, the staff stated that the term "beneficial ownership" under those Rules should be determined in accordance with the new two-part definition of "beneficial owner" set forth in Rule 16a-1 of the Securities Exchange Act. Upon further consideration, the staff believes that the first prong of that definition (i.e., ten percent ownership of the securities) is not relevant for purposes of Rule 17j-1 and Rule 204 since "it is used only to ascertain status as a ten percent holder while the Rules refer to 'any' direct or indirect beneficial ownership." Accordingly, the staff modified its position so that for purposes of Rule 17j-1 and Rule 204, the term "beneficial ownership" should be determined in accordance only with the second part of the definition of "beneficial owner" set forth in Rule 16a-1, i.e., a person must have a "direct or indirect pecuniary interest" to have "beneficial ownership." Amy B.R. Lancellotta Assistant General Counsel Attachment

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