The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 13315

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INSTITUTE COMMENT LETTER ON SEC PROPOSAL TO AMEND RULE 10F-3 UNDER THE INVESTMENT COMPANY ACT

[13315] March 28, 2001 TO: INVESTMENT ADVISERS COMMITTEE No. 7-01 RE: INSTITUTE COMMENT LETTER ON SEC PROPOSAL TO AMEND RULE 10F-3 UNDER THE INVESTMENT COMPANY ACT The Institute has filed the attached comment letter with the Securities and Exchange Commission regarding its proposal to amend Rule 10f-3 under the Investment Company Act of 1940. The proposed amendments would (1) expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering, and (2) modify the rule's quantitative limit to require the aggregation of purchases not only by two or more funds having the same investment adviser, but also by any other account over which the adviser has discretionary authority or exercises control. The comment letter is substantially similar to the draft letter sent to you previously.1 Government Securities. The Institute's letter supports the Commission's proposal to extend Rule 10f-3 to government securities sold through affiliated underwritings. It notes that the nature, quality and marketability of government securities, when combined with the other restrictions of the rule, provide sufficient safeguards to protect against the potential abuses that Rule 10f-3 is intended to address. Percentage Limit. The Institute's letter discusses the current 25 percent limit imposed by the rule and notes that it is more restrictive than necessary given the growth of the fund industry and the increasing number of funds with affiliated underwriter relationships. The letter recommends increasing the threshold to 50 percent, which would provide funds greater flexibility while protecting against potential "dumping" of unmarketable securities. The letter then discusses the Institute's opposition to the Commission's proposal to require aggregation of purchases by a fund adviser's non-fund accounts with those of any funds it advises. After pointing out that the Commission failed to demonstrate why this requirement is necessary, the letter cautions that this requirement could potentially harm both fund shareholders and non-fund accounts alike as the adviser could decide to forego investment opportunities if the amount it could purchase is too small to have any significant effect on the funds or non-fund accounts. The letter adds that if the Commission nevertheless proceeds to 1 See Memorandum to SEC Rules Committee No. 11-01, dated January 26, 2001. 2adopt to adopt this proposal, it only heightens the need to increase the percentage limit, suggested above. Group Sales. The Institute's letter urges the Commission to amend its proposal to permit funds to purchase municipal securities in group sales so as to provide funds wider access to municipal bond offerings. The letter notes that although this was originally proposed when Rule 10f-3 was last amended in 1997, it has never been adopted. The letter notes that increasing demand for municipal securities has shown that the need for rulemaking relief still exists. Transactions Involving Subadvisers. The Institute's letter discusses the issues faced by

subadvisers when technical affiliations with underwriters in a selling syndicate subject them to the prohibition of Section 10(f) and the conditions of Rule 10f-3. The letter explains that the potential for dumping unmarketable securities is not present in such cases as subadvisers to a fund are not in a position to authorize or make investment decisions for an affiliated fund it does not advise. Thus, the application of Rule 10f-3's restrictions in those circumstances serves no investor protection purpose and may act as an impediment to otherwise desirable transactions. Accordingly, the letter urges the Commission to take the opportunity to address these issues by adopting a new rule under Section 10(f) to clarify that these transactions are not subject to the prohibitions under that section of the Act. Barry E. Simmons Associate Counsel Attachment Attachment Attachment (in .pdf format)
