The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 1464

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INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 12D3-1

- 1 - October 12, 1989 TO: SEC RULES COMMITTEE NO. 63-89 CLOSED-END FUND COMMITTEE NO. 44-89 UNIT INVESTMENT TRUST COMMITTEE NO. 69-89 INTERNATIONAL FUNDS TASK FORCE NO. 18-89 RE: INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 12d3-1 _____
As we previously informed you, the SEC has proposed amendments to Rule 12d3-1 under the Investment Company Act that would facilitate the acquisition by a registered investment company of equity securities of foreign securities firms. (See Memorandum to SEC Rules Committee No. 48-89, Closed-End Fund Committee No. 33-89, Unit Investment Trust Committee No. 49-89 and International Funds Task Force No. 9-89, dated August 9, 1989.) Rule 12d3-1 currently requires that any equity securities of securities firms must be "margin securities" in order to be acquired by registered investment companies. The proposed amendments would establish alternative standards for equity securities of foreign issuers. Attached is a copy of the Institute's comment letter on the proposal. In the letter, the Institute argues that there should be no quality standards under the Rule imposed on securities issued by securities firms (domestic and foreign), as such a limitation is not supported by the policies underlying Section 12(d)(3). The letter states that if the SEC is, however, unwilling to remove quality standards from the rule, certain of the conditions should be relaxed. One such condition is the requirement that foreign equity securities be listed on a "qualified foreign exchange" (as defined in the rule) and satisfy other conditions specific to the issuer and the security itself. The Institute stated that these should instead be alternative standards, which would be more comparable to the conditions for domestic securities. The letter also requested that the SEC consider adopting less stringent standards for turnover ratio and annual trading - 2 - volume in order for a foreign exchange to qualify under the Rule. With respect to conditions applicable to the security and issuer, the Institute opposed the condition that the security be part of a class of at least 400,000 shares, excluding shares held by certain insiders. The Institute argued that this would be difficult to ascertain and proposed instead a minimum market capitalization standard. The Institute's letter also opposed the condition that would require that the issuer have complied with all filing requirements for the previous fiscal year. In addition, the letter requested that certain determinations be able to be made as of the most recent publicly available report of the issuer, rather than on the date of acquisition. Finally, the Institute requested that the Rule explicitly cover ADRs convertible into foreign securities that themselves meet the Rule's conditions. We will keep you informed of developments. Craig S. Tyle Associate General Counsel Attachment