

**MEMO# 19486**

December 16, 2005

## **SEC CLARIFIES ITS POSITION CONCERNING A FUND'S SECURITIES LENDING PROGRAM WITH AN AFFILIATED LENDING AGENT**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19486] December 16, 2005 TO: BOARD OF GOVERNORS No. 67-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 68-05 COMPLIANCE MEMBERS No. 29-05 SEC RULES MEMBERS No. 128-05 SMALL FUNDS MEMBERS No. 103-05 RE: SEC CLARIFIES ITS POSITION CONCERNING A FUND'S SECURITIES LENDING PROGRAM WITH AN AFFILIATED LENDING AGENT In a recent letter to the Institute,<sup>1</sup> the staff of the Securities and Exchange Commission requested that the Institute share with its members the following guidance. The letter explains that in a July 24, 2001 no-action letter under Section 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder ("2001 Letter"), the staff addressed the use of Joint Accounts (as defined in the 2001 Letter) through which registered funds would invest their cash collateral from a securities lending program administered by a custodian bank.<sup>2</sup> In footnote 14 of the 2001 Letter, the staff confirmed that certain affiliated persons of the funds could rely on the Letter to use Joint Accounts for the investment of the funds' cash balances from activities in addition to lending securities. The staff's position, however, did not extend to the use of Joint Accounts to invest the funds' cash collateral from a securities lending program for which an affiliated person of the funds was the lending agent. According to the staff, since it issued the 2001 Letter, it has received many inquiries regarding its scope. In its letter to the Institute, the staff has indicated that cash collateral from a securities lending program with an affiliated lending agent may be included in a Joint Account, provided that all of the representations set forth in the 2001 Letter are satisfied. The staff notes that its statement in footnote 14 of the 2001 Letter is superseded to the extent that it is inconsistent with this position. Jane G. Heinrichs Associate Counsel 1 See Letter to Elizabeth Krentzman, General Counsel, Investment Company Institute, from Sara P. Crovitz, Senior Counsel, SEC's Division of Investment Management, dated December 14, 2005, available on the SEC's website at [http://www.sec.gov/divisions/investment/noaction/ici\\_chase121405.htm](http://www.sec.gov/divisions/investment/noaction/ici_chase121405.htm). 2 See The Chase Manhattan Bank, SEC No-Action Letter (pub. avail. July 24, 2001), available on the SEC's website at <http://www.sec.gov/divisions/investment/noaction/chase072401.htm>.

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