

MEMO# 10877

April 7, 1999

INSTITUTE COMMENT LETTERS ON THE REGULATION OF TAKEOVERS AND SECURITY HOLDER COMMUNICATIONS

[10877] April 7, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 13-99 SEC RULES COMMITTEE No. 25-99 SECURITIES OFFERINGS TASK FORCE RE: INSTITUTE COMMENT LETTERS ON THE REGULATION OF TAKEOVERS AND SECURITY HOLDER COMMUNICATIONS

The Institute has filed a comment letter (attached) with the Securities and Exchange Commission ("SEC") generally supporting a proposed rule change regarding the regulation of takeovers and security holder communications. In particular, the comment letter states that the Institute supports the proposed relaxation of the current restrictions on communications by bidders and targets with security holders. These proposals should enhance the ability of bidders and targets to communicate information to investors regarding tender offers, proxy and consent solicitations much earlier in the process than is permitted under existing rules and would thereby advance the objectives of increased access for investors of reliable information. In addition, the comment letter states that the Institute supports the proposal to level the playing field between cash tender offers and exchange offers by permitting third-party exchange offers to commence on a similar time frame to cash tender offers. Eliminating or mitigating the advantage that cash tender offers have over exchange offers should be beneficial to investors because it gives investors greater investment choices by eliminating a regulatory barrier that currently discourages bidders from proposing exchange offers. The comment letter also states that the Institute supports the proposed requirement that certain documents begin with a summary term sheet written in plain English. The Institute believes that, consistent with the SEC's general initiatives to provide investors with clear, concise and understandable information, it is particularly important that security holders and other market participants be able to understand the essential features of proposed transactions. Finally, the Institute's letter states that there are certain issues in the proposals unique to investment companies that the SEC should consider. Investment companies as issuers are generally not involved in the types of transactions covered by the proposals to the same extent as other issuers. The Institute believes that it is important, however, that to the extent investment companies are covered by the proposals, the final rules be drafted to avoid any unintended consequences for investment companies. The Institute therefore recommended that several minor technical changes be made to the proposals. Ari Burstein Assistant Counsel Attachment

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