

MEMO# 7078

June 30, 1995

INSTITUTE MEMORANDUM ON POLICIES CONCERNING TRADING IN TROUBLED DEBT SECURITIES

June 30, 1995 TO: CLOSED-END FUND COMMITTEE No. 32-95 COMPLIANCE COMMITTEE No. 29-95 SEC RULES COMMITTEE No. 79-95 CREDITOR'S RIGHTS ADVISORY COMMITTEE RE: INSTITUTE MEMORANDUM ON POLICIES CONCERNING TRADING IN TROUBLED DEBT SECURITIES

In recent years renewed interest has been paid to potential misuse of material, nonpublic information in the troubled debt market. The Institute recommends that each member carefully assess its policies and procedures related to troubled debt to determine whether, given the member's specific business activities, those policies and procedures are reasonably designed to prevent insider trading. The Institute is pleased to provide the enclosed memorandum to assist members in conducting this assessment. The memorandum, which was prepared by Institute counsel, suggests situations in which Institute members might receive material, nonpublic information regarding troubled debt, such as situations connected with their service on a bankruptcy creditors' committee or on a pre-bankruptcy "ad hoc" creditors' committee. The memorandum then addresses four possible means to avoid the misuse of such information: information-blocking and conduct-blocking devices; trading with similarly situated participants; unsolicited transactions; and explicit notification of nondisclosure of nonpublic information known by the member. The memorandum also provides sample letters with clauses a member might find appropriate in memorializing an agreement to serve on a creditors' committee, to trade with a similarly situated party, or to acknowledge unsolicited trades or trades based on an explicit notification of nondisclosure of nonpublic information. Due to the diversity of organizations and business operations among member firms, these sample letters are not intended to be models. Rather, they are intended to assist members in considering a number of issues when preparing such letters. While, of course, this memorandum cannot be relied upon as a substitute for appropriate professional advice, the Institute believes that it will be informative and useful to members as they reassess their policies and procedures concerning trading in troubled debt. Please feel free to contact the undersigned (at 202/326-5819) if you have any questions or comments concerning this memorandum.

Thomas Selman Associate Counsel Attachment