

**MEMO# 5353**

November 30, 1993

# **APPLICATION OF HART-SCOTT-RODINO PREMERGER NOTIFICATION RULES TO ACQUISITIONS OF INVESTMENT COMPANY SHARES BY INSTITUTIONAL INVESTORS**

November 30, 1993 TO: PENSION COMMITTEE NO. 39-93 RE: APPLICATION OF HART-SCOTT-RODINO PREMERGER NOTIFICATION RULES TO ACQUISITIONS OF INVESTMENT COMPANY SHARES BY INSTITUTIONAL INVESTORS

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires prior notification of the Federal Trade Commission (FTC) concerning certain securities acquisitions, including acquisitions of investment company stock. Although the FTC's premerger notification rules include an exemption for certain institutional investors, such as retirement plans, such notification may still be required if the investor contemplated a holding of \$25 million or more that would exceed 15 percent of an investment company's outstanding voting securities. Thus, for example, a retirement plan seeking to make a significant investment in a relatively small mutual fund could be required to file with the FTC and undergo a review by the agency. This could result in a significant delay, which could present a market risk for the investor under many circumstances. In addition, a mutual fund may be unable to predict for a potential purchaser the number of its shares that will be outstanding at any point in time. In light of the potential competitive disadvantage to small funds, including new funds, the Institute is considering contacting the FTC to urge modification of the premerger notification rules to exempt certain acquisitions of voting securities of investment companies. Please consult with your organization and contact the undersigned at (202) 955-3516 by Thursday, December 9 if your organization feels that the industry's interest in this issue is sufficient to warrant Institute involvement. Kathy D. Ireland Associate Counsel - Pension