

**MEMO# 7959**

June 11, 1996

# **DRAFT INSTITUTE COMMENT LETTER ON PROPOSED BANK AGENCY INTERPRETATION OF BANK SUITABILITY OBLIGATIONS**

1 See Memorandum to Small Funds Committee No. 9-96, dated May 29, 1996. 2 See Memorandum to Small Funds Committee No. 3-96, dated March 27, 1996. June 11, 1996  
TO: SMALL FUNDS COMMITTEE No. 10-96 RE: DRAFT INSTITUTE COMMENT LETTER ON  
PROPOSED BANK AGENCY INTERPRETATION OF BANK SUITABILITY OBLIGATIONS

As we previously reported, the federal bank regulatory agencies recently issued a joint proposed interpretation concerning a banks suitability obligations to institutional customers.<sup>1</sup> The bank agency proposal is substantially similar to an interpretation recently proposed by the NASD.<sup>2</sup> A copy of the Institute's draft comment letter on the bank agency proposal is attached. The bank agencies' proposal states, "While the interpretation in this section is potentially applicable to any institutional customer, the guidance contained in this section is more appropriately applied to an institutional customer with at least \$10 million invested in securities in the aggregate in its portfolio and/or under management." The Institute's comment letter seeks clarification that a bank's suitability obligation and the guidance provided by the interpretation would apply identically with respect to all registered investment companies, regardless of the amount of assets that a particular investment company has under management. The Institute's letter further states that all registered investment companies are equally subject to the Investment Company Act of 1940. Consequently, there would be no reason to assume that the ability of an investment company to evaluate risk independently and to evaluate independently a bank's recommendation would depend upon the amount of assets that the investment company has under management. Moreover, an interpretation that liberalizes the suitability requirements of banks with respect to larger investment companies could inadvertently lead to discrimination against smaller investment companies, thereby depriving them of valuable investment opportunities. The comment period on the bank agencies' proposal ends on June 24, 1996. Please provide your comments to me (at 202/326-5819) by Wednesday, June 19, 1996. Thomas M. Selman Associate Counsel Attachment