The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 7854

May 9, 1996

DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 10F-3

1 See Memorandum to SEC Rules Committee No. 21-96 (March 22, 1996). May 9, 1996 TO: SEC RULES COMMITTEE No. 37-96 RE: DRAFT COMMENT LETTER ON PROPOSED AMENDMENTS TO RULE 10f-3

_____ Attached for your review is a draft comment letter on the SECs proposed amendments to Rule 10f-3 under the Investment Company Act of 1940.1 Some of the positions expressed in the draft letter and related issues for your consideration are briefly outlined below. Comments on the proposed amendments must be filed by June 3rd. Please call the undersigned at (202) 326-5822 with any comments on the draft letter by Wednesday, May 22nd. Quantitative Limits The Commission has proposed to raise to 10% the current 4% limit on the amount of an offering that any fund (or group of funds with the same investment adviser) may purchase under Rule 10f-3. The draft letter recommends that the Commission eliminate the limit (except in certain cases noted below). It suggests that if the limit is not eliminated, it should be raised to 25%. If the percentage limit is eliminated, are there any other conditions that should apply? For example, should the rule require a majority of independent directors and/or prohibit interested directors from having any position with the affiliated investment banking entity? Should the rule require that any transaction thereunder be consistent with the stated policies of each fund or series participating (as under Rule 17a-7) or that the directors determine that a funds participation in the transaction is in the best interests of the fund (as under Rule 17a-8)? Is the 25% limit appropriate? Foreign Securities The draft letter supports the Commissions proposal to extend Rule 10f-3 to securities issued in an "Eligible Foreign Offering." One of the conditions is that the securities be issued as part of a "public offering" (unless they are Rule 144A securities). The letter suggests that, instead of being limited to "public offerings" of foreign securities, the rule also should allow funds to purchase foreign securities in non-public offerings, subject to a 15% limit on the amount of the offering that an affiliated fund (or group of such funds with the same investment adviser) may purchase. (The letter argues that this limit essentially would serve the same purpose as the proposed "public offering" requirement.) Do members support this approach? Should other conditions apply instead of a "public offering" requirement, such as a minimum market float or listing requirement? Are the other proposed conditions for Eligible Foreign Offerings (i.e., regarding regulation, disclosure and pricing) appropriate? Rule 144A Securities The draft letter supports allowing purchases of "Foreign Issuer Rule 144A Securities" under the rule, but recommends extending the rule to domestic Rule 144A securities as well. Consistent with the recommendations made with respect to foreign securities, the draft letter suggests that domestic Rule 144A offerings and foreign Rule 144A offerings not involving a

concurrent public offering of securities of the same class be subject to a 15% limit on the amount of the offering that funds may purchase. Do members agree with this recommendation? Is the proposed definition of "Foreign Issuer Rule 144A Securities" otherwise appropriate? Are there any additional or different conditions that should apply in the case of either foreign or domestic Rule 144A securities? Municipal Securities The draft letter supports the SECs proposal to permit funds to purchase municipal securities in group sales, but suggests that the proposed requirement that the affiliated underwriter be committed to underwriting no more than 50% of the offering be deleted. The letter recommends instead that the affiliated underwriters percentage participation in the syndicate be limited to 50%. Does this proposed modification work? Should we suggest any alternative conditions to address potential overreaching in the case of group sales of municipal securities? Other Matters Are there other securities to which the rule should apply and, if so, under what conditions? Do the other existing conditions of the rule make sense (e.g., only firm commitment underwritings, seasoning requirement, rating requirement)? If not, how should they be changed? Frances M. Stadler Associate Counsel Attachment

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