

MEMO# 6261

October 3, 1994

INSTITUTE LETTER TO SEC STAFF ON RULE 17F-5

October 3, 1994 TO: INTERNATIONAL COMMITTEE NO. 17-94 SEC RULES COMMITTEE NO. 105-94 RE: INSTITUTE LETTER TO SEC STAFF ON RULE 17f-5

Enclosed is a copy of a letter prepared by counsel to the Institute and submitted to the SEC's Division of Investment Management concerning revisions to Rule 17f-5, the rule under the Investment Company Act of 1940 that allows fund assets to be maintained in foreign custody. The letter describes the Institute's position with respect to amendments to Rule 17f-5 proposed by a coalition of custodian banks. As you may know, the Institute submitted two previous letters to the Division of Investment Management recommending amendments to Rule 17f-5. Our letter of January 18, 1993 proposed changes that would permit a fund's board of directors to delegate the selection and management of foreign custody arrangements to the fund's adviser or U.S. custodian. (See Memorandum to SEC Rules Committee No. 9-93, International Committee 3-93, dated January 22, 1993.) Our letter of October 13, 1993 recommended changes in the rule's definition of "eligible foreign custodian." (See Memorandum to SEC Rules Committee No. 95-93, International Committee 23-93, dated October 27, 1993.) The Institute's letters were followed by a February 9, 1994 submission to the SEC staff by a coalition of seven banks that serve as custodians for registered investment companies. The coalition banks generally supported the Institute's recommendations, but suggested a number of modifications. As set forth in the attached letter, the coalition proposal addresses certain issues that our submissions did not, and we support a number of their recommended changes. Their submission also includes some provisions that we do not support, and that we were unable to resolve in meetings with coalition representatives. In particular, we disagree with the provisions of the coalition proposal that would a) retain within the rule various "country risk" determinations, b) exempt the use of compulsory foreign depositories from certain of the rule's provisions, and c) qualify the standard of care to be used in selecting an eligible foreign custodian in a manner that we believe is inconsistent with the best interest of investors. Angela C. Goelzer Associate Counsel