

MEMO# 8635

February 11, 1997

INSTITUTE COMMENT LETTER ON PROPOSED PRIVATE INVESTMENT COMPANY RULES

1 See Memorandum to SEC Rules Committee No. 134-96 (Dec. 20, 1996). February 11, 1997 TO: SEC RULES COMMITTEE No. 18-97 RE: INSTITUTE COMMENT LETTER ON PROPOSED PRIVATE INVESTMENT COMPANY RULES

As we previously informed you, the Securities and Exchange Commission issued for public comment several new rules under the Investment Company Act of 1940 that relate to the new exception for private investment companies that consist solely of certain financially sophisticated persons or so-called "qualified purchasers."¹ A copy of the Institutes comment letter on the proposal is attached and summarized below. The Institutes letter points out that the Commission should act cautiously in implementing the new exemption because of the potential dangers to the investing public and to the markets from the sale of unregulated pooled investment vehicles. The letter also strongly encourages the Commission to address two matters that are not discussed in detail in the proposing release -- the meaning of the prohibition on public offerings and the meaning of the limitation on investments in Section 3(c)(7) pools to qualified purchasers including, in particular, that participant directed retirement plans only would be permitted to invest in the qualified purchaser pools if all plan participants were themselves qualified purchasers. The letter supports a narrower definition of "investments" than that proposed by the Commission. Specifically, the letter supports including securities and commodity interests held for investment purposes and supports excluding most real estate, all physical commodities, and most cash and cash equivalents. (The letter supports including as investments interests in real estate that are held in the form of a security and cash and cash equivalents that represent proceeds from a recent sale of investments.) The letter also supports the proposed exclusion of indebtedness incurred to acquire investments and the proposed deduction of payments received by any person during the preceding twelve months under an insurance policy, as a gift, or because of a divorce. In addition, the letter supports requiring a purchaser to provide documentation regarding his or her ownership of investments and requiring that an issuers reliance on such information be reasonable. Finally, the letter opposes the proposed safe harbor from integration for sponsors of any Section 3(c)(1) fund who converts it to a 3(c)(7) fund and then forms a new Section 3(c)(1) fund. Dorothy M. Donohue Assistant Counsel Attachments (in .pdf format)

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