

MEMO# 2752

May 13, 1991

INSTITUTE REQUESTS CLARIFICATION OF DEFINITION OF "OFFICER" UNDER SECTION 30(F) OF THE 1940 ACT

May 13, 1991 TO: CLOSED-END FUND COMMITTEE NO. 10-91 SECTION 16 TASK FORCE RE: INSTITUTE REQUESTS CLARIFICATION OF DEFINITION OF "OFFICER" UNDER SECTION 30(f) OF THE 1940 ACT _____ The Institute submitted the attached letter to the Division of Investment Management requesting interpretive advice with respect to the definition of "officer" for purposes of Section 30(f) of the Investment Company Act, which requires all officers of a registered closed-end fund and affiliates of the fund's adviser (which includes officers of the adviser) to the filing requirements under Section 16 of the Securities Exchange Act. The need for interpretive guidance arose as a result of the amended definitions under the Section 16 rules, since the SEC's release adopting those amendments did not clarify whether the new definitions were applicable to the requirements under Section 30(f). The Institute recommended that the staff clarify that "officer" for purposes of Section 30(f) be interpreted in a consistent manner with the definition contained in Rule 16a-1 and that only officers of the adviser that perform a policy-making function in connection with the adviser's management of the closed-end fund be required to report under Section 16. In its letter, the Institute noted that Rule 30f-1 states that the rules under Section 16 are applicable for purposes of determining the duties and responsibilities under Section 30(f). Moreover, use of the new definition of "officer" under Section 30(f) would be consistent with the Commission's intent in amending the Section 16 rules, which is to "rescind unnecessary requirements [and] streamline mandated requirements." If this definition were not applicable, there could be a large number of persons with officer titles but not policy-making functions that would be subject to the reporting requirements under Section 16. The Institute stated that it also would be consistent with the Commission's intent in amending Section 16 to interpret the definition of "officer" to include only officers of the adviser to the closed-end whose policy-making functions involves participation, directly or indirectly, in the adviser's management of the fund. If the term "officer" were not interpreted in this manner, persons with a policy-making function that is not related to the adviser's management of the fund (e.g., a senior loan officer in a bank that is an adviser to a closed-end fund) would be subject to the Section 16 requirements by virtue of Section 30(f). We will keep you informed of developments. Amy B.R. Lancellotta Assistant General Counsel Attachment

should not be considered a substitute for, legal advice.