

**MEMO# 1394**

September 1, 1989

## **SEPTEMBER 19 MEETING TO DISCUSS PROBLEMS WITH IMPLEMENTING INVESTMENT COMPANY ACT RULE 11A-3**

September 1, 1989 TO: SEC RULES COMMITTEE NO. 54-89 OPERATIONS COMMITTEE NO. 15-89 UNIT INVESTMENT TRUST COMMITTEE NO. 59-89 RE: SEPTEMBER 19 MEETING TO DISCUSS PROBLEMS WITH IMPLEMENTING INVESTMENT COMPANY ACT RULE 11A-3

As you are aware, the Securities and Exchange Commission has adopted Investment Company Act Rule 11a-3, which applies to mutual fund exchange offers at other than net asset value. (See Memorandum to SEC Rules Members No. 37-89 and Operations Members No. 25-89, dated August 7, 1989.) The rule is effective October 23, 1989. However, funds that have obtained orders under Section 11 that are not conditioned upon compliance with Rule 11a-3, when adopted, have one year from the effective date to adjust fees and sales loads in conformity with the rule. Several mutual fund groups that have orders conditioned upon compliance with Rule 11a-3 have informed the Institute staff that they would have severe operational problems in meeting the October 23 deadline. In addition, one fund group has met with the staff of the SEC's Division of Investment Management to discuss problems in implementing the rule. As a result, the SEC staff has requested that the Institute write to them describing the operational problems posed by implementation and setting forth the extent of the problems. In addition, the SEC staff would like to know, if an extension is granted, whether there would be a way to make investors who invest during any interim period whole at a later date. For example, could amounts charged as 12b-1 fees be reserved against and shareholders made whole after the extended effective date? There will be a meeting at the Institute at 10:00 a.m. on September 19 to discuss problems with implementation of the rule. If you will be able to attend, please so inform Marie Stanley (202/955-3524) of the Institute no later than September 12. If you have problems with the implementation of the rule and will not be able to attend the meeting, please call the undersigned at 202/955-3522 or Donald Boteler at 202/955-3552. Craig S. Tyle Assistant General Counsel