

MEMO# 5968

June 16, 1994

INSTITUTE LETTER ON SEC PROPOSAL TO REQUIRE DISCLOSURE ON CONFIRMS OF LACK OF SIPC MEMBERSHIP

June 16, 1994 TO: SEC RULES COMMITTEE NO. 64-94 UNIT INVESTMENT TRUST COMMITTEE NO. 42-94 RE: INSTITUTE LETTER ON SEC PROPOSAL TO REQUIRE DISCLOSURE ON CONFIRMS OF LACK OF SIPC MEMBERSHIP

_____ As we previously informed you, the Securities and Exchange Commission has proposed amendments to Rule 10b-10 under the Securities Exchange Act of 1934 to require, among other things, disclosure on the confirmation that the broker or dealer transmitting the confirmation is not a member of the Securities Investor Protection Corporation ("SIPC"), or that the broker or dealer clearing or carrying the customer account is not a member of SIPC, if such is the case. (See Memorandum to SEC Rules Members No. 18-94 and Unit Investment Trust Members No. 6-94, dated March 23, 1994.) The Institute submitted the attached comment letter on the proposal. The Institute's letter expresses strong opposition to the proposed disclosure requirement as it would apply to those SIPC- exempt broker-dealers whose business consists exclusively of the distribution of shares of registered open-end investment companies and unit investment trusts for several reasons. First, the proposed "negative" disclosure (i.e., that a mutual fund underwriter or unit investment trust sponsor is not a SIPC member) would be misleading to investors since it could create the false impression that securities sold by these firms are riskier than those sold by SIPC-covered firms. In fact, these broker- dealers are specifically exempted from becoming SIPC members because they do not the raise the same risks SIPC coverage is designed to address. It also could cause confusion where client accounts are carried by broker-dealers who are SIPC members and a SIPC-exempt fund underwriter generates the confirm for a transaction involving the fund's shares. Second, in support of its proposal, the Commission did not demonstrate that there was any potential investor confusion regarding SIPC coverage involving a mutual fund or unit investment trust underwriter. Finally, the proposed disclosure could be unduly burdensome in those cases where a fund underwriter sends out a confirmation on behalf of the broker who is carrying the account. The fund underwriter would have to determine whether or not the broker is a member of SIPC and modify its systems to include on the confirmation the required disclosure if the broker is not a SIPC member. Amy B.R. Lancellotta Associate Counsel Attachment

should not be considered a substitute for, legal advice.