

MEMO# 1404

September 14, 1989

INSTITUTE COMMENTS ON REPROPOSED RULE 144A

September 14, 1989 TO: SEC RULES MEMBERS NO. 50-89 INTERNATIONAL FUNDS TASK
FORCE NO. 13-89 UNIT INVESTMENT TRUST COMMITTEE NO. 62-89 INVESTMENT ADVISERS
COMMITTEE NO. 38-89 RE: INSTITUTE COMMENTS ON REPROPOSED RULE 144A

The Institute has filed the attached comment letter with the Securities and Exchange Commission on repropose Rule 144A, which would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for the resale of restricted securities to certain institutional buyers. (See Memorandum to SEC Rules Committee No. 39-89, International Funds Task Force No. 5-89, Investment Advisers Committee No. 27-89 and Unit Investment Trust Committee No. 35-89, dated July 17, 1989.) The Institute commented on several technical points concerning the revised definition of "family of funds" in the reproposal. Specifically, the Institute recommended that the definition include two or more funds that are managed by affiliated advisers, along with funds that are managed by the same adviser. We also requested that the Commission delete the word "separately" from the definition which refers to two or more "separately registered investment companies," since it does not seem to have any particular relevance for purposes of the definition. Finally, we recommended that the definition of "family of funds" be modified to permit insurance companies to aggregate the assets in their insurance separate accounts with the assets in their other funds. The Institute also commented that investment advisers eligible to purchase securities under the repropose Rule should be permitted to purchase securities thereunder for its discretionary accounts, as well as for its own account. With respect to the information requirements in the reproposal, we recommended that the issuer, rather than the seller, be responsible for providing the required information to a buyer upon request. Concerning the issue of liquidity of securities sold under the repropose Rule, the Institute supported the approach outlined in the reproposal of having the board of - 2 - directors of a mutual fund and the trustee or evaluator of a UIT determine the liquidity of such securities. We will keep you informed of developments. Amy B. Rosenblum Assistant General Counsel Attachment