

MEMO# 1883

April 30, 1990

INSTITUTE COMMENT LETTER ON THE AGENDA FOR THE ANNUAL SEC-NASAA CONFERENCE ON THE UNIFORMITY OF SECURITIES LAWS

April 30, 1990 TO: BOARD OF GOVERNORS NO. 31-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 13-90 INVESTMENT ADVISER MEMBERS NO. 14-90 STATE SECURITIES MEMBERS NO. 13-90 UNIT INVESTMENT TRUST MEMBERS NO. 25-90 RE: INSTITUTE COMMENT LETTER ON THE AGENDA FOR THE ANNUAL SEC-NASAA CONFERENCE ON THE UNIFORMITY OF SECURITIES LAWS

Each year the Securities and Exchange Commission and the North American Securities Administrators Association have a Conference on the Uniformity of Securities Laws. Prior to the Conference, the SEC and NASAA solicit comments from industry on the issues to be discussed at the Conference. In some years, the Conference is preceded by a hearing at which industry members have an opportunity to testify. This year there will not be a hearing and the Institute submitted the attached letter that contains comments on the issues to be discussed at this year's Conference. The Institute has participated in these hearings since the establishment of the hearings in 1983. As a result of the Institute's 1983 testimony, NASAA established its Investment Companies Committee. That Committee recommended, and NASAA adopted, resolutions in 1984 and 1985 urging states to suspend or repeal their expense limitations and to adopt uniform procedures in the areas of sales literature filing requirements, registration requirements, sales report filing requirements and oversales. However, since the adoption of the resolutions urging uniformity, actual implementation by the states has been slow. Since 1983, the Institute has repeatedly requested that the SEC and NASAA work together and that NASAA work with its members to achieve uniform securities regulation. This year, the Institute again urged the SEC and NASAA to work towards uniformity and submitted the following additional comments. Concerning investment companies, the Institute recommended that the SEC and NASAA (i) carefully review the proposal of the Office of the Comptroller of the Currency to amend its regulations governing bank common trust funds and to take such steps as are necessary to ensure that all publicly- offered bank common trust funds are made fully subject to federal and state securities laws, and (ii) work within existing investment company structures to develop standards to allow the international cross-marketing of investment company securities and to base any state standards on either the "blue chip" exemption from registration or the UCITS Directive adopted by the European Community. The Institute also recommended that NASAA amend its resolution that sets forth the procedure to facilitate coordination between the SEC and the states in the event of a mutual fund's failure to register in the states to provide that the standard of care imposed on the adviser (or other

third party service provider responsible for blue sky registration) be that which is set forth in Section 17(i) of the Investment Company Act of 1940 rather than a standard of absolute liability. The Institute also recommended that the SEC adopt the Institute's proposal for uniform performance advertising for unit investment trusts. Concerning the registration of investment advisers, the Institute recommended that if a self-regulatory organization to supervise the investment advisory industry is necessary, then such SRO should be for inspection purposes only and should not have substantive rulemaking authority over investment advisers. The Institute further recommended that NASAA (i) modify the Uniform Investment Adviser Law Examination (Series 65), (ii) amend Form ADV to accommodate the development of the central registration system and to establish uniform updating requirements, (iii) amend the model definition of "investment adviser representative" to exclude individuals such as portfolio analysts who do not have client contact and individuals who are not members of an adviser's investment committee, (iv) work with the SEC and industry to ensure that investment advisory clients of the accounting profession have available to them all of the protections of the federal and state securities laws and (v) give serious consideration to abolishing the bank exemption from the definition of "investment adviser". Patricia Louie Assistant General Counsel Attachment

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