

MEMO# 11862

May 9, 2000

LETTER TO SEC ON POSSIBLE AMENDMENTS TO RULE 10B-10

* See Memorandum to SEC Rules Members No. 13-00, dated February 16, 2000. [11862]
May 9, 2000 TO: SEC RULES COMMITTEE No. 70-00 UNIT INVESTMENT TRUST COMMITTEE
No. 14-00 RE: LETTER TO SEC ON POSSIBLE AMENDMENTS TO RULE 10b-10

Earlier this year, the Securities and Exchange Commission filed an amicus brief in litigation pending in the Second Circuit Court of Appeals in which it addressed the application of the Commission's confirmation disclosure rule (Rule 10b-10 under the Securities Exchange Act of 1934) to Rule 12b-1 fees and to "cash compensation" payments made by mutual fund investment advisers and principal underwriters to broker-dealers who distribute mutual fund shares. In its brief, the Commission concluded that Rule 10b-10 requires disclosure of both 12b-1 fees and cash compensation payments. The Commission found that the disclosures made in the cases at issue were sufficient to satisfy Rule 10b-10's requirements. At the same time, however, the Commission noted that it had directed the staff to make recommendations to the Commission concerning "whether additional disclosure should be required or existing disclosure further refined." In anticipation of the staff's consideration of this matter, the Institute has sent the attached letter to the staff. The Institute's letter recommends that the Commission clarify that, as indicated in its amicus brief, prospectus disclosure of 12b-1 fees that meets the requirements of Form N-1A is sufficient to satisfy the requirements of Rule 10b-10. The letter also recommends that the Commission amend Rule 10b-10 to provide that cash compensation payments need not be disclosed in specific detail on confirmations, but rather may be disclosed by the broker-dealer in general terms at or before the time of a customer's initial purchase of fund shares. As noted in the letter, this recommendation is consistent with the Institute's previous recommendations to the NASD on this topic. Frances M. Stadler Deputy Senior Counsel Attachment

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