

**MEMO# 5544**

November 29, 1994

# **LETTER TO ONTARIO SECURITIES COMMISSION ON NON-RESIDENT FUND MANAGERS**

November 29, 1994 TO: CLOSED-END FUND COMMITTEE No. 30-94 SEC RULES COMMITTEE No. 127-94 UNIT INVESTMENT TRUST COMMITTEE No. 79-94 RE: LETTER TO ONTARIO SECURITIES COMMISSION ON NON-RESIDENT FUND MANAGERS

As you know, the Institute has been working in recent months to obtain an interpretation of Ontario law that would permit a U.S. investment adviser with no Canadian business presence to manage a publicly-offered Canadian mutual fund. In this regard, the Institute submitted a letter to and met with Ontario Securities Commission ("OSC") staff last June to urge a modification of the requirement that only a Canadian resident firm may register as an investment counsel/portfolio manager and manage a publicly-offered mutual fund. The OSC staff recently indicated to the Institute that it will permit a U.S. resident adviser to register as an investment counsel/portfolio manager if the adviser a) complies with all applicable regulatory requirements and b) satisfies the OSC that an appropriate level of proficiency is met. As a registered investment counsel/portfolio manager, a U.S. adviser could sponsor and advise a publicly-offered Canadian fund on a cross-border basis, i.e., without establishing an office in Canada. On January 21, the Institute sent the attached letter to the OSC staff proposing further clarification of the specific regulatory and proficiency requirements that would apply to non-resident U.S. advisers. Our letter addresses a) record-keeping, b) agent for service of process, and c) proficiency requirements. Regarding record-keeping, our letter recommends that the OSC adopt a practice similar to that set forth under Rule 204-2 under the Investment Advisers Act of 1940, and permit a non-resident registrant to maintain records outside Ontario if the adviser agrees to furnish the records promptly to the OSC upon request and at the adviser's expense. Our letter also suggests that U.S. resident advisers should be required to appoint an agent for service of process and submit irrevocably to Ontario jurisdiction. With request to proficiency, we recommend that Ontario recognize that a U.S. portfolio manager has established equivalency if the manager has experience in the industry and has successfully completed the Series 65 Uniform Investment Adviser Examination and the first year of a Chartered Financial Analyst course. A copy of our letter to the OSC is enclosed. Angela C. Goelzer Associate Counsel - International

should not be considered a substitute for, legal advice.