

MEMO# 1017

March 6, 1989

USE OF THE MANUAL EXEMPTION TO EXEMPT RESALES IN THE STATES

March 6, 1989 TO: UNIT INVESTMENT TRUST COMMITTEE NO. 10-89 RE: USE OF THE MANUAL EXEMPTION TO EXEMPT RESALES IN THE STATES

In most states, unit trusts rely on an exemption from registration under the state securities acts for resales of units of unit trusts. The most commonly relied on exemption is the manual exemption, which exempts a non-issuer distribution if the issuer is listed in a securities manual accepted by the state securities department. Approximately thirty-seven states have adopted the manual exemption. On four occasions since the unit trusts joined the Institute in 1985, the Institute has been called upon to defend the use of the manual exemption for resales of units of unit trusts. Missouri takes the position that unit trusts are not entitled to a non-issuer distribution exemption, such as the manual exemption. In August, 1986, the Institute suggested that the Missouri Securities Division adopt an exemption for any offer or sale of a unit of a unit trust after an initial bona fide sale of the unit and repurchase of it by a sponsor of the unit investment trust. In February, 1987, Missouri adopted, by rule, the exemption suggested by the Institute. In October, 1986, the Idaho Department of Finance proposed to amend its manual exemption in a way that would preclude its use by unit trusts for resales. The Institute suggested an exemption that would allow unit trusts to continue to use the manual exemption. In November, 1986, the Idaho Department of Finance adopted, by rule, the Institute's suggestion. In September, 1987, the Oklahoma Department of Securities issued an interpretive opinion that secondary trades of units of unit trusts through a market maintained by the sponsor would not be deemed non-issuer transactions. Based on that interpretation, the manual exemption could not be used by unit trusts for resales of units. The Institute requested that the Department grant an exemption from registration for resales of units of unit trusts. In November, 1987, the Department issued an Order Granting Exemption which exempts the resale of units of unit trusts. Recently, Virginia repealed its manual exemption. The Director of the Virginia Securities Division has agreed to work with the Institute to develop a solution to the problem of registering units of unit trusts for resale. Relying on the manual exemption to avoid registration of units for resales in the states is likely to be a continuing problem for two reasons. The first reason is unrelated to unit trusts. Many states believe that securities that could otherwise not qualify for registration, such as penny stocks, are being sold under the manual exemption. Some of these states, such as Virginia, believe that the exemption should be repealed to stop the sale of such securities. The second problem relates to the unit trusts' entitlement to use the manual exemption. As stated above, the manual exemption is available only for non-issuer distributions. Some states, such as Oklahoma, have questioned whether a resale by a sponsor of the unit trust is a non-issuer distribution. It is likely, because of issues such as the penny stock problem, that other states may

attempt to repeal or amend their manual exemption. The problem created by a manual exemption being repealed or amended is compounded by the time frame in which the Institute generally has to react to such legislation or rule making. Therefore, it would be helpful if a plan of action were developed prior to the next attempt by a state to repeal or amend a manual exemption. On March 21, 1989, a meeting will be held in the New Jersey Room at the Mayflower Hotel, 1127 Connecticut Ave., Washington, D.C. to discuss this matter. Lunch will be served at noon; the meeting will begin at 1:00 p.m. Please let Mary Jenkins at (202) 293-7700 know if you can attend. Natalie Shirley Associate General Counsel

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