

MEMO# 7572

January 19, 1996

OHIO ADOPTS AMENDMENTS RELATING TO LIQUIDITY OF RULE 144A SECURITIES AND COMMERCIAL PAPER

1 See Memorandum to SEC Rules Committee No. 119-95, State Securities Members No. 46-95, and Unit Investment Trust Members No. 58-95, dated November 10, 1995. January 19, 1996 TO: SEC RULES COMMITTEE No. 5-96 STATE SECURITIES MEMBERS No. 4-96 UNIT INVESTMENT TRUST MEMBERS No. 2-96 RE: OHIO ADOPTS AMENDMENTS RELATING TO LIQUIDITY OF RULE 144A SECURITIES AND COMMERCIAL PAPER

Effective January 21, 1996, the Ohio Division of Securities (the "Division") has adopted amendments to Rule 1301:6-3-09(E)(12) that conform Ohios liquidity treatment of Rule 144A securities to that of federal law. Thus, the amendments, which were adopted as proposed,¹ allow an investment company investing in Rule 144A securities to treat such securities as liquid if the funds board of directors determines them to be liquid. The amendments also permit certain rated commercial paper to be treated as liquid under specified conditions. Unlike federal law, however, under the Ohio provision all unrated commercial paper will be treated as illiquid. During the comment process on these amendments, two interpretive issues were raised with the Division that are not addressed in the adopted rule. The first relates to the provision in paragraph (b)(iii) of the rule, which provides that commercial paper that is rated in one of the two highest categories by an NRSRO is liquid if the funds board of directors determines "that the commercial paper is of equivalent quality and is liquid." The issue is to what the phrase "of equivalent quality" refers. The second issue relates to whether the determinations that must be made by a funds board of directors may, consistent with federal law, be delegated to the funds investment adviser. The Institute has written to the Ohio Commissioner of Securities to request the Divisions official position on these issues. A copy of the amendments to Rule 1301:6-3-09, as adopted, and the Institutes letter to the Commissioner seeking clarification of these two issues is attached. Tamara K. Cain Assistant Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8305 or (202)326-5903, and ask for this memo's attachment number: 7572.

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