

MEMO# 5797

April 15, 1994

INSTITUTE COMMENT LETTER ON 1994 CONFERENCE ON FEDERAL- STATE SECURITIES REGULATION

April 15, 1994 TO: BOARD OF GOVERNORS NO. 33-94 INVESTMENT ADVISER MEMBERS NO. 17-94 SEC RULES COMMITTEE NO. 48-94 STATE SECURITIES MEMBERS NO. 18-94 UNIT INVESTMENT TRUST COMMITTEE NO. 30-94 RE: INSTITUTE COMMENT LETTER ON 1994 CONFERENCE ON FEDERAL- STATE SECURITIES REGULATION

Since 1983, the Securities and Exchange Commission and the North American Securities Administrators Association have held an annual conference on uniformity of federal-state regulation. Prior to the Conference, the SEC and NASAA solicit written comments on the issues to be discussed. This year, the Institute submitted the attached comment letter that focused on the need for the SEC, NASAA and the individual states to work together to eliminate the inconsistencies that result from a dual federal- state regulatory system. The Institute's comment letter is summarized below.

1. Disclosure Issues The Institute's letter expressed support for the SEC's summary prospectus proposal in that it would provide information in a concise easy-to-read format that will make it easier for investors to assess a particular mutual fund and to compare several different funds. While the letter emphasized our support for the SEC's proposal, it also noted our concerns over recent individual state proposals that would require unique summary disclosure forms as a condition of registering shares of an investment company in a particular state. The Institute's letter also set forth two concerns with respect to state disclosure comments. First, the letter noted the increased tendency of the states to require additional disclosure that is not required by the SEC to be included in a fund prospectus. Moreover, the letter expressed concern with state comments requesting that the location of disclosure be moved to another part of the prospectus. In order to resolve these concerns, the letter urged that NASAA and the individual states work with the SEC to develop uniform recommendations in areas such as prospectus disclosure.

2. State Investment Restrictions While certain progress has been made in the area of uniform procedural filing requirements since 1983, one area that continues to trouble the investment company industry is inconsistent state substantive regulation. The Institute's letter noted that inconsistent substantive regulation of investment companies advances absolutely no legitimate investor protection purpose and that the only effects of these requirements are either to unduly hamper the ability of a fund to achieve its investment objectives or to impose significant costs on shareholders. The Institute's letter therefore recommended that NASAA contact each state that continues to apply inconsistent investment restrictions to encourage them to repeal or suspend application of such.

3. Bank Securities Activities Given the growth of bank involvement in the mutual fund industry and the volume of guidelines issued by the federal and state banking and securities regulators,

the Institute's letter noted that this is an area especially in need of uniformity of federal and state regulations. In order to provide for the uniform protection of investors in all mutual funds, the Institute's letter encouraged the SEC and NASAA to support federal legislative proposals for functional regulation and to work together with the banking agencies to ensure that any requirements imposed on the sale of mutual funds through the bank distribution channel are consistent and uniform.

4. Derivatives The Institute's letter noted that this is an area that also has received widespread scrutiny by the federal regulators and Congress. Inasmuch as the issues posed by derivatives market generally, and by mutual funds' use of derivatives in particular, are being addressed by a broad range of federal policymakers, the Institute's letter strongly encouraged NASAA and the individual states to work jointly with the SEC and other agencies with respect to any project relating to derivatives.

5. Disclosure of Front-End Loads on Mutual Fund Confirmations The SEC's Division of Market Regulation has indicated that it intends to withdraw a 1979 no-action letter that sets forth the requirements for information that must be included on a mutual fund confirmation. The Institute's letter noted that we will be responding to the SEC staff's request for information on this topic and will provide this information to NASAA at that time.

6. Personal Trading by Portfolio Managers The Institute's letter stated that as a result of the SEC's and industry's efforts, mutual fund portfolio managers are subject to standards in the exercise of their fiduciary responsibilities that compare favorably with any other managers of pooled investment vehicles. Nonetheless, in view of industry's rapid growth, the Institute has formed a blue-ribbon Advisory Group to review and assess the adequacy of existing requirements and a report will be provided to the SEC, Congress, NASAA and other interested parties in mid-May.

7. Investment Adviser Issues The Institute's letter expressed our general support for the proposals issued by the SEC and NASAA on revisions to Form ADV, the rules under the Investment Advisers Act of 1940 and the NASAA Model Amendments.

Patricia Louie Associate Counsel Attachment