

MEMO# 1470

October 16, 1989

DRAFT INSTITUTE COMMENT LETTER ON AMENDMENTS TO RULES UNDER SECTION 16

- 1 - October 16, 1989 TO: SEC RULES COMMITTEE NO. 64-89 CLOSED-END FUND COMMITTEE NO. 45-89 UNIT INVESTMENT TRUST COMMITTEE NO. 71-89 INVESTMENT ADVISERS COMMITTEE NO. 42-89 RE: DRAFT INSTITUTE COMMENT LETTER ON AMENDMENTS TO RULES UNDER SECTION 16

As we previously informed you, the SEC has repropose for comment amendments to the rules under Section 16 of the Securities Exchange Act. (See Memorandum to SEC Rules Committee No. 51-89, Closed-End Fund Committee No. 35-89, Unit Investment Trust Committee No. 53-89 and Investment Advisers Committee No. 35-89, dated August 23, 1989.) Attached is a copy of a draft of the Institute's comment letter. In the draft letter, the Institute has three principal comments: (1) The letter supports the exemption for customer accounts managed by "13G Institutions" from the aggregation of holdings in order to determine insider status. The letter opposes the limitations on this exemption mentioned in the SEC release in the cases of (1) ten percent holdings for a single customer and (2) a single person or committee making investment decisions for each customer account. (2) The letter supports the safe harbor for certain performance fees under the pecuniary interest test, but recommends that the exemption cover non-performance related fees, as well. (3) The letter requests that the SEC clarify that an investment company of which a member of its board of trustees is a Section 16 insider will not itself be deemed an insider. Comments are due November 1. If you have any comments on the draft, please contact the undersigned no later than 5:00 p.m. on Friday, October 27. - 2 - Craig S. Tyle Associate General Counsel Attachment