

**MEMO# 2412**

January 4, 1991

# **INSTITUTE REQUESTS EXEMPTION FOR MUTUAL FUND AND UNIT INVESTMENT TRUSTS UNDERWRITERS FROM RECORDKEEPING AND REPORTING REQUIREMENTS UNDER THE MARKET REFORM ACT**

January 4, 1991 TO: BOARD OF GOVERNORS NO. 1-91 SEC RULES COMMITTEE NO. 2-91  
UNIT INVESTMENT TRUST COMMITTEE NO. 1-91 RE: INSTITUTE REQUESTS EXEMPTION FOR  
MUTUAL FUND AND UNIT INVESTMENT TRUST UNDERWRITERS FROM RECORDKEEPING AND  
REPORTING REQUIREMENTS UNDER THE MARKET REFORM ACT

The Institute recently submitted a letter to the Director of the Division of Market Regulation of the Securities and Exchange Commission requesting that the Commission propose an exemptive rule providing that any registered broker-dealer engaged in underwriting only securities issued by open-end investment companies or unit investment trusts will be exempt from the requirements of Section 17(h) of the Securities Exchange Act of 1934 ("1934 Act") and any rules thereunder. A copy of the Institute's letter is attached. The recently enacted Market Reform Act of 1990 added Section 17(h) to the 1934 Act to authorize the Commission to adopt rules requiring registered broker-dealers to maintain certain records and make certain reports regarding the activities and financial condition of affiliated firms that could have a material adverse impact on such registered broker-dealers. This section of the legislation was developed in response to, among other things, the recent failure of Drexel Burnham Lambert Group, Inc. and related risks to the securities markets as a whole. Section 17(h)(4) provides that the Commission by rule or order may exempt any person or class of persons from the provisions of subsection (h) and rules thereunder on the basis of certain factors, including "the nature and extent of the registered person's securities activities." The Institute's letter contends that requiring mutual fund and unit investment trust underwriters to comply with the requirements of Section 17(h) would not make a meaningful contribution to the goal of the legislation, because the activities of such underwriters involve less risk than is involved in general brokerage activities. Moreover, the failure of such underwriters would not be likely to have a material adverse impact on the securities markets as a whole. Accordingly, the letter requests that the Commission exercise its authority under Section 17(h)(4) to propose an exemptive rule excluding mutual fund and unit investment trust underwriters from the requirements of Section 17(h) and rules thereunder. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel Attachment

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