

MEMO# 5285

October 29, 1993

INSTITUTE COMMENTS ON PROPOSED REVISION TO UCC ARTICLE 8

October 29, 1993 TO: SEC RULES COMMITTEE NO. 96-93 RE: INSTITUTE COMMENTS ON
PROPOSED REVISION TO UCC ARTICLE 8

For the past several months, the Institute has been reviewing the proposed revisions to Article 8 of the Uniform Commercial Code ("Proposed Revision") in order to identify issues of particular concern for investment companies. In connection with this review, we previously distributed a memorandum that detailed the effect of the Proposed Revision on the (1) risks of holding securities indirectly, (2) allocation of losses resulting from a securities intermediary's failure, (3) effect on rights of funds that pledge or repo portfolio securities, and (4) provisions relating securities issued by funds. (See Memorandum to SEC Rules Committee No. 63-93, dated July 13, 1993.) The Institute recently submitted the attached comment letter to the Reporter to the Article 8 Drafting Committee. The comment letter strongly supports the principal changes that would be effected by the Proposed Revision. In particular, the letter notes that the Proposed Revision will enhance the understanding by market participants of both the nature and limitations inherent in the rights of investors that hold securities indirectly. In so doing, the Proposed Revision will add clarity and promote the efficiency of the securities transfer system. The comment letter also recommended that the Proposed Revision be amended to (1) provide more certainty in determining when a securities entitlement is created, (2) impose an affirmative duty on securities intermediaries to maintain written records of any and all securities entitlements against them, (3) enable investors to achieve a high degree of protection for their securities entitlements, (4) eliminate the provision that provides a securities intermediary need not perform its duties in the event of a default, (5) clarify that for purposes of non-UCC law, an indirect holding of securities (i.e., a securities entitlement) would not affect the character of that investment as a "security", and (6) clarify that uncertificated securities are an authorized investment. The Article 8 Drafting Committee anticipates distributing a final draft of the Proposed Revision within the next few months in order that it could be considered and voted upon at the annual meeting of the National Conference of Commissioners on Uniform State Laws in May 1994. Patricia Louie Associate Counsel Attachment