

MEMO# 5609

February 24, 1994

SEC REPROPOSES LARGE TRADER REPORTING SYSTEM

1 See Memorandum to SEC Rules Committee No. 52-91 and Investment Issues Committee No. 10-91, dated August 30, 1991; Memorandum to Investment Advisers Committee No. 44-91, dated September 12, 1991; and Memorandum to Unit Investment Trust Committee No. 31-91, dated September 25, 1991. 2 See Memorandum to Investment Issues Committee No. 22-91, SEC Rules Committee No. 71-91, Investment Advisers Committee 60-91 and Unit Investment Trust Committee No. 45-91, dated December 12, 1991. February 24, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 14-94 INVESTMENT ISSUES COMMITTEE NO. 3-94 SEC RULES COMMITTEE NO. 19-94 UNIT INVESTMENT TRUST COMMITTEE NO. 14-94 RE: SEC REPROPOSES LARGE TRADER REPORTING SYSTEM

The Securities and Exchange Commission has repropounded Rule 13h-1 under the Securities Exchange Act of 1934, to establish an activity-based large trader reporting system. The SEC initially proposed Rule 13h-1 in 1991, pursuant to the Market Reform Act of 1990, to provide the SEC with the information necessary to reconstruct trading activity in periods of market stress and for enforcement and other regulatory purposes.¹ The reproposal is intended to address commenters' concerns that the reporting system as originally proposed would have been unduly burdensome and costly. The reproposal incorporates many of the Institute's comments on the original proposal.² A copy of the SEC's release is attached. Set forth below is a brief description of the significant provisions of repropounded Rule 13h-1. Definition of "Large Trader" Paragraph (a)(1) of the repropounded rule defines "large trader" as every person who, for an account that he owns or controls, effects transactions for the purchase or sale of any publicly traded security or securities, directly or indirectly, by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level. The identifying activity level, which is contained in paragraph (a)(8) of the repropounded Rule, would be the lesser of 200,000 shares and fair market value of \$2 million, or fair market value of \$10 million. These minimum thresholds have been increased from the original proposal of 100,000 shares or fair market value of \$4 million. The time period for aggregating transactions also would be changed from a 24 hour period to "a calendar day where the account is located." Many of the terms included in the definition of large trader, such as account, ownership, and control, and the original aggregation rules have been modified to address concerns raised by the Institute and other commenters about the overly broad scope of the proposed definition of a large trader. For example, the definition of "ownership" in paragraph (a)(4) has been modified to address concerns that employees, officers, directors and controlling shareholders would have been subject to the reporting requirements solely by virtue of their relationship with a large trader entity (see p. 12 of the SEC's release). ³Filing Requirements A large trader would be required to file repropounded Form 13H within 10 business days after it first effects transactions that reach the

identifying activity level. Upon filing the Form 13H, the identified large trader would receive from the SEC a unique large trader identification number ("LTID"). Large traders would be required to disclose their LTIDs and accounts to broker-dealers that carry large trader accounts. Thereafter, large traders only would be required to file an updated Form 13H annually, instead of every time the "information contained therein becomes inaccurate for any reason," as originally proposed. Form 13H elicits minimal descriptive information about the large trader. The reproposal modifies the original proposed Form 13H, schedules and instructions to reduce the scope of information required. The reproposal would, among other things, provide an exemption from the filing requirements of Item 4 of the repropose Form, which requires identification on a separate schedule of all officers, directors and trustees of a large trader corporation or trust, for persons regulated by the SEC by allowing incorporation by reference of information already on file with the SEC (such as in Forms ADV, BD and N-1A). Inactive Filing Status Paragraph (b)(3) of the repropose Rule would implement a new "inactive filing status" for large traders whose aggregate transactions during the previous full calendar year do not reach the identifying activity level and an aggregate calendar year total of 2,000,000 shares or fair market value of \$30,000,000. The new inactive status was designed, in part, to eliminate the ongoing burdens of the proposed reporting system on unit investment trusts. (See note 74 of the SEC's release.) Broker-Dealer Requirements A broker-dealer that carries accounts for itself or others would be required to make and keep records of transactions effected directly or indirectly by or through such broker or dealer for all large traders that equal or exceed the reporting activity level (i.e., equal to or greater than the lesser of \$2,000 shares or fair market value of \$100,000). Broker-dealers that carry accounts for large traders, or other persons for whom records must be maintained, would be required to report transactions electronically upon request by the SEC. The record keeping and reporting requirements have been modified to minimize the potential burdens upon broker-dealers under the proposal. Transition Period The reporting requirements contained in repropose Rule 13h-1 would become effective 18 months after adoption of the final Rule. * * * Comments are due to the SEC on the repropose large trader reporting system by April 18, 1994. If you have any comments on the reproposal that you would like the Institute to consider including in a letter on the reproposal, please provide them to me by March 25, 1994. My direct number is 202/326-5824 and the fax number is 202/326-5828. Amy B.R. Lancellotta Associate Counsel 4Attachment