

MEMO# 4673

April 6, 1993

INSTITUTE COMMENTS ON NEBRASKA REQUIREMENT REGARDING REPRESENTATION OF BROKER-DEALER AND AGENT STATUS

April 6, 1993 TO: SEC RULES COMMITTEE NO. 31-93 STATE LIAISON COMMITTEE NO. 19-93
UNIT INVESTMENT TRUST COMMITTEE NO. 18-93 COMPLIANCE COMMITTEE NO. 6-93 RE:
INSTITUTE COMMENTS ON NEBRASKA REQUIREMENT REGARDING REPRESENTATION OF
BROKER-DEALER AND AGENT STATUS

The Institute has been advised that the Nebraska Securities Bureau recently began requiring investment company registrants to submit a representation that all securities of the investment company distributed or sold in Nebraska will be distributed or sold only through Nebraska registered agents of a Nebraska registered broker-dealer. It is our understanding that this undertaking is required because the Securities Bureau is concerned that banks are involved in the offer and sale of investment company securities. Since the Nebraska Securities Act expressly excludes banks from the definition of "broker-dealer", the securities activities of banks and their personnel are not subject to the broker-dealer or agent registration provisions. Thus, as a means of subjecting bank personnel to the agent registration provisions, the Securities Bureau is attempting to require issuers of investment company securities to submit the foregoing representation which may result in bank employees becoming registered as agents of the investment company's distributor. The Institute submitted the attached letter to the Securities Bureau expressing concern with respect to this requirement. In its letter, the Institute questioned the Securities Bureau's authority to require this representation from investment company issuers. As issuers of securities, investment companies are required to register the securities prior to the offer or sale of such in Nebraska; the statute does not require the issuer to ensure that the sale of its securities are effected by a registered broker-dealer or registered agent. Moreover, this requirement places an unreasonable burden on investment companies. As noted above, in order to comply with this request, investment companies whose shares are sold by bank employees would be forced to have those employees register as agents of the investment company's distributor, thus, subjecting the distributor to supervisory and compliance procedures for employees of an unrelated third party, i.e., the bank. The Institute also questioned why investment company issuers were the only issuers subject to this requirement, particularly since other securities products are sold by banks. The Institute has requested a meeting with the staff of the Securities Bureau to discuss this issue in additional detail. We will keep you advised of developments. Patricia Louie Associate Counsel Attachment

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