MEMO# 9405

November 11, 1997

DRAFT COMMENT LETTER ON SEC CONCEPT RELEASE REGARDING EQUITY INDEX INSURANCE PRODUCTS

* See Memorandum to SEC Rules Committee No. 83-97, dated August 29, 1997. [9405] November 11, 1997 TO: SEC RULES COMMITTEE No. 108-97 RE: DRAFT COMMENT LETTER ON SEC CONCEPT RELEASE REGARDING EQUITY INDEX INSURANCE PRODUCTS _____ As we recently reported, the Securities and Exchange Commission has issued a concept release soliciting comment on the status of equity index annuities and other equity index insurance products under the federal securities laws.* Attached is a draft comment letter on this concept release. The Institutes draft letter takes the position that all equity index insurance products ("EIPs") should be registered under the federal securities laws. The letter expresses the view that these products are not eligible for the exemption for insurance contracts provided under Section 3(a)(8) of the Securities Act, and that they are outside the safe harbor of Rule 151 under that Act for certain annuity products. The Institutes position is based on the fact that investors, not insurers, assume the primary risk under EIPS, and that EIPs can be fairly marketed only as securities rather than as insurance products. Accordingly, EIPs present significant investor protection concerns that can be addressed only by regulating them under the federal securities laws, including provisions of the Investment Company Act. Comments are due to the SEC on the EIP concept release by Thursday, November 20, 1997. Please provide me with your comments on the draft letter by Monday, November 17, 1997. My direct number is 202/326-5824, my e-mail address is amy@ici.org and the fax number is 202/326-5827. Amy B.R. Lancellotta Associate Counsel Attachment (in .pdf format)