

MEMO# 6346

October 31, 1994

SEC ISSUES CONCEPT RELEASE AND NOTICE OF HEARING ON FORWARD-LOOKING INFORMATION

October 31, 1994 TO: CLOSED-END FUND COMMITTEE NO. 24-94 INVESTMENT ISSUES COMMITTEE NO. 12-94 SEC RULES COMMITTEE NO. 116-94 UNIT INVESTMENT TRUST COMMITTEE NO. 68-94 RE: SEC ISSUES CONCEPT RELEASE AND NOTICE OF HEARING ON FORWARD-LOOKING INFORMATION

The Securities and Exchange Commission recently issued a concept release soliciting comment on the current safe harbor for the presentation of forward-looking information by issuers, and on proposals for reform. The Commission also stated that it will hold a public hearing on February 13, 1995, to consider these issues. The comment period ends on January 11, 1995. If you have any comments on the release, please provide them to the undersigned by November 21, 1994. Rule 175 under the Securities Act of 1933 and Rule 3b-6 under the Securities Exchange Act of 1934 offer safe harbor protection for specified forward-looking statements, unless the statement was made without a reasonable basis or was disclosed other than in good faith. The safe harbor does not cover forward-looking information issued by investment companies. Among other matters, the Commission's release requested comment on whether "the forward-looking information that might be disclosed by registered investment companies, i.e., projections of fund performance," are "inappropriate for the protection of the safe harbor." The Commission also asked whether distinctions should be made according to the type of investment company and how this information would be revised or updated. The concept release also described various proposals to reform the safe harbor with respect to corporate issuers. These include a "seasoned issuer" proposal for a safe harbor with respect to forward-looking statements concerning NASDAQ or exchange-listed securities; a "business judgement rule proposal" that would provide protection along the lines of the state business judgment rule; and a "heightened definition" proposal that would protect forward-looking statements unless they contain material misstatements or omissions, made or omitted with scienter, and are relied upon by private plaintiffs. Thomas M. Selman Associate Counsel Attachment