

MEMO# 1119

April 19, 1989

INSTITUTE COMMENT LETTER ON THE AGENDA FOR THE ANNUAL SEC-NASAA CONFERENCE ON THE UNIFORMITY OF SECURITIES LAWS

April 19, 1989 TO: BOARD OF GOVERNORS NO. 25-89 STATE SECURITIES MEMBERS NO. 14-89 UNIT INVESTMENT TRUST MEMBERS NO. 23-89 INVESTMENT ADVISER MEMBERS NO. 26-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 25-89 RE: INSTITUTE COMMENT LETTER ON THE AGENDA FOR THE ANNUAL SEC-NASAA CONFERENCE ON THE UNIFORMITY OF SECURITIES LAWS _____ Each year the Securities and Exchange Commission and the North American Securities Administrators Association have a Conference on the Uniformity of Securities Laws. Prior to the Conference the SEC and NASAA solicit comments from the industry on the issues to be discussed at the Conference. In some years the Conference is preceded by a hearing at which industry members have an opportunity to testify. The attached letter contains the Institute's comments on the issues to be discussed at this year's Conference. In prior years the Institute has submitted comments to the SEC and NASAA on the need for coordination and uniformity in the state and federal securities laws and regulations applicable to investment companies and investment advisers in 1983, 1985, 1986, 1987 and 1988 and has testified at hearings on the matter in 1983, 1986, 1987 and 1988. As a result of the Institute's 1983 testimony, NASAA established its Investment Companies Committee. That Committee recommended, and NASAA adopted, resolutions in 1984 and 1985 urging states to suspend or repeal their expense limitations and to adopt uniform procedures in the areas of sales literature filing requirements, registration requirements, sales report filing requirements and oversales. At the time of the 1983 Conference on Uniformity, 25 states enforced traditional expense limitations. Today, only 1 state enforces such a limitation and it will grant waivers from the application of the limitation. Other issues raised by the Institute in prior years have included the need for model state investment adviser regulations coordinated with federal requirements and for a statement by the states on the applicability of the definitions of "investment adviser" in state laws to financial planners. NASAA has since adopted model regulations which are coordinated with federal requirements and the SEC and NASAA have issued a joint release on the application of the definitions of "investment adviser" to financial planners. This year there will not be a hearing, but the Institute has submitted the following comments to the SEC and NASAA. Concerning investment companies the Institute has requested that NASAA (i) urge California, the sole state still applying a traditional expense limitation, to suspend or repeal its limitation, (ii) amend its model amendments to the Uniform Securities Act of 1956 to add a provision for the indefinite registration of securities by mutual funds and unit investment trusts and (iii)

urge the individual states to implement NASAA's 1984 and 1985 investment company resolutions. Concerning the registration of investment advisers, the Institute has identified the following areas in which further efforts by NASAA may be necessary: (i) drafting amendments to Form ADV, the joint federal-state registration form, to accommodate the development of a central registration system and to establish uniform updating requirements; (ii) defending of state law definitions of "investment adviser" from attempts to obtain an exception for accountants; (iii) narrowing NASAA's model definition of "investment adviser representative"; and (iv) encouraging states to adopt the new uniform law examination for investment advisers and developing a practice examination and appropriate waivers from both examinations. Concerning the other investment adviser issues raised in the Release announcing the Conference, the Institute reiterated its position that adoption of the proposed federal registration exemptions for investment advisers would consign the protection of many investors to state securities departments with inadequate regulatory systems and inadequate resources and would be likely to lead to increased compliance costs for interstate advisers. Instead, the Institute suggested that the resource problems faced by the SEC and state securities departments be addressed either by increased funding or by authorizing the NASD to serve as an inspection-only self-regulatory organization for investment advisers. In the interim, methods for leveraging existing resources, such as joint SEC- state inspection programs, should be continued. Mary K. Bellamy Associate General Counsel Attachments