

**MEMO# 2359**

December 4, 1990

# **ICI COMMENT LETTER ON PROPOSED CHANGES TO RULES GOVERNING INDEX PARTICIPATIONS**

December 4, 1990 TO: BOARD OF GOVERNORS NO. 81-90 RE: ICI COMMENT LETTER ON  
PROPOSED CHANGES TO RULES GOVERNING INDEX PARTICIPATIONS

Attached is a copy of a comment letter recently submitted by the Institute to the Securities and Exchange Commission in connection with proposed amendments to the rules governing index participations. The amendments, proposed by the Philadelphia Stock Exchange, would permit its index participation products (known as CIPs) to be redeemed daily without payment of any penalty. Index participations have not been traded since the U.S. Court of Appeals for the Seventh Circuit ruled that they constituted futures, rather than securities, and thus could only be traded on a futures exchange. (See Memorandum to Board of Governors No. 51-89, dated August 22, 1989.) The proposed amendments are apparently intended to make the product less like a futures contract. The Institute's comment letter states that it does not take any position on whether CIPs constitute futures or securities. However, it states that, if CIPs are deemed to be securities, they would also constitute investment company securities requiring registration under, and compliance with, the 1940 Act. We will keep you informed of developments. Craig S. Tyle Associate General Counsel Attachment

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