

MEMO# 2719

April 25, 1991

CALIFORNIA SECRETARY OF STATE ADOPTS FINAL ANTI-APARTHEID DISCLOSURE REGULATIONS

April 25, 1991 TO: SEC RULES MEMBERS NO. 26-91 STATE SECURITIES MEMBERS NO. 18-91 CLOSED-END FUND MEMBERS NO. 17-91 UNIT INVESTMENT TRUST MEMBERS NO. 16-91 RE: CALIFORNIA SECRETARY OF STATE ADOPTS FINAL ANTI-APARTHEID DISCLOSURE REGULATIONS _____ As we previously informed you, the Institute was notified by the California Secretary of State that it would continue to accept and file the South Africa Business Notices required pursuant to Proposition 105 until the decision declaring Proposition 105 unconstitutional becomes final. Proposition 105 requires all corporations issuing securities in California to include disclosure in their prospectuses of "whether or not" that corporation (or any affiliated corporation) does business in South Africa, or with any person or group located in South Africa. (See Memorandum to SEC Rules Members No. 19-91, State Securities Members No. 12-91, Closed-End Fund Members No. 15-91 and Unit Investment Trust Members No. 11-91 dated March 5, 1991.) The Institute has been informed that the California Attorney General has filed a notice appealing the Court of Appeal's decision with the California Supreme Court. We have also been advised that final disclosure regulations have been adopted by the Secretary of State. The final regulations are very similar to the emergency regulations that have been in effect since January 1990. (See Memorandum to SEC Rules Members No. 73-89, State Securities Members No. 43-89, Closed-End Fund Members No. 69-89 and Unit Investment Trust Members No. 71-89, dated December 19, 1989.) The following is a summary of the final regulations. Business Trusts. Section 21920(f) expressly excludes entities organized as business trusts from the disclosure requirements. Determination of Doing Business with Persons Located in South Africa. Section 21922(e) clarifies that a corporation is doing business "with a person or group located in South Africa" if its sales and purchases of goods and services (including financial services) between it and such persons or groups totals \$10,000 or more in the current fiscal year. In the case of multinational organizations, the corporation need only consider transactions with the South African locations of such organizations. Special Rules for Investment Companies. Section 21922(g) specifies that a mutual fund need not consider whether its sponsor nor whether corporations in which it invests are doing business in South Africa in order to determine whether it is doing business in South Africa. Mutual funds are also not considered to be subsidiaries of their sponsors. The foregoing also applies to closed-end funds. Notice Form and Filing. Section 21924 requires each corporation selling securities in California to file a notice that attaches photocopies of the required prospectus disclosure, as well as the cover page of the prospectus with the Secretary of State. Specified Disclosure. Section 21926 specifies the exact disclosure that should appear in prospectuses of corporations selling

shares in California. In addition to the specified disclosure as to whether or not the corporation does business in South Africa, the disclosure must also state (1) that the information is only accurate when the prospectus was written, (2) that the buyer may contact the Secretary of State for updated information, and (3) the address and telephone number of the Secretary of State (See Section 21922(c)). Location of Disclosure. Section 21934 specifies that the prospectus disclosure must be printed "conspicuously" on one of the first five pages of prospectus, or printed on a sticker attached to one of the first five pages of the prospectus. It is not sufficient to include the disclosure in a document not delivered with the prospectus. Obligation to Update Disclosure. Section 21938 states that a new South Africa Business Notice will be required if the statements in the prior Notice are no longer correct due to changed circumstances, or if the prospectus has been reprinted and the statements in the prospectus as to doing business in South Africa are different from those in the prior prospectus. The new notice must include the legend "Updated Information" on its face. If the prospectus has not been reprinted, the corporation need not attach pages from the prospectus. * * * A copy of the final regulations is attached. We will keep you advised of further developments. Patricia Louie Assistant General Counsel
Attachment

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