

**MEMO# 5172**

September 22, 1993

## **UPDATE ON NASAA ELECTRONIC FILING SYSTEM**

September 22, 1993 TO: SEC RULES COMMITTEE NO. 81-93 STATE LIAISON COMMITTEE NO. 41-93 UNIT INVESTMENT TRUST COMMITTEE NO. 45-93 RE: UPDATE ON NASAA ELECTRONIC FILING SYSTEM \_\_\_\_\_

As you know, for the past several years, the Institute has been working with the North American Securities Administrators Association ("NASAA") and various NASAA committees to develop a state electronic filing system, the Securities Registration Depository ("SRD"). As currently proposed, the SRD will accept documents filed electronically via the Securities and Exchange Commission's EDGAR system (and designated by the filer for state distribution) as well as certain "state only" documents (e.g., individual state sales reports) transmitted directly by the filer. The SRD will be an official archive of state- filed material and will forward materials to the designated state agencies upon their request. In addition, the SRD will collect, verify and transfer all registration and exemption fees payable to the states. In August, the Institute met with NASAA to discuss the status of the SRD. The following summarizes the major issues discussed at this meeting: 1. Current Timetable for SRD Earlier this year, NASAA conducted a Vendor Bidder's Conference to provide potential vendors with the Business Plan for the SRD and to address specific questions regarding the project. After consideration of the bids submitted by the potential vendors, NASAA selected General Electric Information Services ("GEIS") to prepare a Functional Specification Document ("FSD") to detail how the SRD will operate functionally. In addition, the FSD will set forth the type of information which may be filed on the SRD and the manner such information will be retrieved by various users of the SRD. According to NASAA, it is anticipated that a draft FSD will be presented to members of NASAA at the NASAA Fall Conference later this month. If approved by members of NASAA, public comment on the FSD will be solicited until the end of the year. After conclusion of the public comment period, NASAA will begin developing a pilot SRD. It is contemplated that the pilot SRD will commence operations by the first quarter of 1994 and will last for approximately six months. Initially, the pilot program will involve payment of registration fees only and thereafter will be expanded to accept securities registration filings. It is our understanding that NASAA expects issuers to pay to participate in the pilot program. In addition, issuers participating in the pilot program will be required to submit their securities registration filings electronically as well as in paper format to the pilot states. NASAA has asked the states represented on the NASAA Technology and Technology Advisory Committees (California, Connecticut, Georgia, Missouri, Ohio, Oklahoma, Texas, Washington, Wisconsin), as well as certain other states (Arizona, Massachusetts, New Mexico), to participate in the pilot program. It is the Institute's understanding that issuers may be assessed a fee for participating in the pilot program. The Institute has offered to work with NASAA to identify a variety of investment companies to participate in the pilot program. 2. Participation on the

SRD Participation by securities issuers on the SRD is expected to be voluntary. Because it is voluntary, issuers may elect not to use the SRD if the services provided, or the costs of using the SRD, are unacceptable. Issuers desiring to file on the SRD will be required to enter into an agreement with NASAA-SRD. The Institute assumes that the agreement will set forth, in detail, the covenants and warranties related to filing on the SRD. At a minimum, we believe the agreement should address whether a filing made on the SRD constitutes a timely filing to the states and whether such a filing fulfills the document delivery requirements for each state. In addition, we believe the agreement should also address whether information filed on the SRD will be deemed confidential or whether all states will have access to all information filed. During our meeting, NASAA initially indicated that (1) information filed on the SRD would be secure for each issuer, (2) a state would have access to and only receive information relating to that particular state, and (3) comments would not be publicly available. However, later in the course of the meeting, NASAA indicated that upon request any information filed with the SRD would be available to any state and that NASAA will be developing two new forms (an informational filing form and request for access form) to accommodate these state requests. The Institute strongly suggested that guidelines be drafted (for possible inclusion in the agreement) as to when information may be released by the SRD to the states and what notice an issuer will have of the request for information. NASAA has not yet determined the appropriate entity at NASAA that will be responsible for drafting this agreement and it is unclear what provisions will be included in the agreement or when a draft agreement would be available for review and comment.

3. Cost of Using SRD NASAA recognizes that in order to attract issuers to use the SRD, the cost to use the SRD must be equal to or less than the costs currently associated with registering securities. NASAA is considering a variety of fee payment systems to use the SRD. One method would require payment of a maintenance fee for each registration of an issuer. Thus, for example, a mutual fund would pay a maintenance fee for each fund registered in the states which would cover all filings made during a particular time period. Another alternative would be to assess a fee on a per offering or per filing basis. While NASAA has stated that the SRD hopes to save issuers half of the costs currently incurred in filing offerings, at this time, NASAA has not yet determined specific cost estimates for using the SRD. However, with respect to states utilizing the SRD, additional computer resources will be needed to ensure the timely receipt and processing of information through the SRD and NASAA has recently indicated that states will have to bear the cost of obtaining the necessary equipment associated with using the system. \* \* \*

In addition to meeting with NASAA, the Institute has also met with other interested parties to discuss policy concerns associated with the design and implementation of the SRD. As a result of these discussions, the Institute sent a letter to NASAA expressing the concerns raised at these meetings. A copy of this letter is attached. The Institute will be forming an SRD Technology Task Force to analyze the operational and technical specifications of the SRD and to formulate comments on the Functional Specification Document. In addition, we will also be forming an SRD Policy Task Force to review the policy issues associated with the SRD, in particular, confidentiality of information filed on the SRD, in order to submit additional comments to NASAA. Please contact me at (202) 955-8432 if you would like to participate on either of these task forces.

3Tamara K. Cain Assistant Counsel Attachment