

MEMO# 1610

December 19, 1989

CALIFORNIA ISSUES ANTI-APARTHEID DISCLOSURE REGULATIONS

- 1 - December 19, 1989 TO: SEC RULES MEMBERS NO. 73-89 STATE SECURITIES MEMBERS NO. 43-89 CLOSED-END FUND MEMBERS NO. 69-89 UNIT INVESTMENT TRUST MEMBERS NO. 71-89 RE: CALIFORNIA ISSUES ANTI-APARTHEID DISCLOSURE REGULATIONS, EFFECTIVE JANUARY 1, 1990 _____ The office of the California Secretary of State has issued emergency regulations relating to Proposition 105, which requires each corporation issuing securities in California to include disclosure in its prospectus of "whether or not" it (or any affiliated corporation) does business in South Africa, or with any person or group located there. A copy of the regulations is attached. The regulations include a copy of the notice form required to be filed under Proposition 105. All corporate issuers must file the notice no later than January 1, 1990. However, the regulations delay the effectiveness of the required prospectus disclosure in the case of prospectuses printed and distributed prior to January 1, 1990. Such prospectuses do not need to contain the required disclosure until the earlier of (1) the reprinting of the prospectus and (2) July 1, 1990. In many respects, the final regulations are the same as the proposed regulations previously sent to you. (See Memorandum to SEC Rules Members No. 59-89, State Securities Members No. 35-89, Closed-End Fund Members No. 57-89 and Unit Investment Trust Members No. 56-89, dated October 18, 1989). However, the final regulations differ from or expand upon the proposed regulations in several important respects. Location of Disclosure. The regulations specify that the prospectus disclosure must be printed "conspicuously" on one of the first five pages of the prospectus, or printed as a sticker attached to one of the first five pages. It is not sufficient to include the disclosure in a document not delivered with the - 2 - prospectus. Thus, it appears that the disclosure cannot be set out in the Statement of Additional Information. Special Rules for Investment Companies. The regulations specify 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. (The Institute had requested this clarification. See Memorandum to State Securities Members No. 42-89 and Closed-End Fund Members No. 65-89, dated December 5, 1989). Specified Disclosure. The regulations specify the exact disclosure that should appear in prospectuses of corporations selling shares in California. For those that do not do business in, or with anyone located in, South Africa, the prospectus should state: "This corporation does not do business in, or with any person or group located in, South Africa." "Company" may be substituted for "corporation". In addition, the disclosure must 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 phone number of the Secretary of State. Business Trusts. The final regulations, unlike the

proposed regulations, do not expressly exclude business trusts. However they expressly apply only to "business corporations or stock corporations or nonprofit corporations".

Determination of Doing Business with Persons Located in South Africa. The final regulations clarify that a corporation is doing business "with a person or group located in South Africa" if its sales and purchases of goods and services between it and such persons or groups totals \$10,000 or more for either the current or prior fiscal year. In the case of multinational organizations, the corporation need only consider transactions with the South African locations of such organizations.

Further Information. The California Secretary of State will establish a special telephone line for questions about Proposition 105. The number is 916/327-6427. Until the line is in effect, questions should be directed to Margery Knapp, Staff Counsel, at 916/445-0620. Craig S. Tyle Associate General Counsel Attachment

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