

**MEMO# 4112**

September 22, 1992

## **UNIFORMITY PROPOSAL ADOPTED BY NASAA**

September 22, 1992 TO: BOARD OF GOVERNORS NO. 69-92 STATE SECURITIES MEMBERS NO. 39-92 UNIT INVESTMENT TRUST MEMBERS NO. 47-92 RE: UNIFORMITY PROPOSAL ADOPTED BY NASAA \_\_\_\_\_ As you know, there is a great divergence among the states with respect to the information to be filed with, and the forms to be used for, registration of mutual fund and unit investment trust securities. For the past several years, the Institute has been working with the North American Securities Administrators Association ("NASAA") and the individual states to promote a uniform method of registration and renewal of mutual fund and unit trust securities. Most recently, the Institute has been working closely with the NASAA Investment Company Registration/Trading Practices Committee to draft a model registration statute and regulations for investment companies in order to coordinate state registration filings with those required by the Securities and Exchange Commission and to promote procedural uniformity among the states. The impetus for uniformity on the state level is the development by NASAA of an electronic filing program, the Securities Registration Depository ("SRD"). NASAA has recognized that uniformity of securities registration procedures will be a key factor in the development and success of the SRD. The Institute is pleased to advise you that members of NASAA adopted the "Investment Company Uniformity Project - Model Investment Company Registration and Reporting Procedures" ("model procedures") on September 15, 1992. The model procedures include many of the Institute's recommendations, particularly with respect to the treatment of oversales. A copy of the model procedures is attached. The following is a brief summary of the model procedures: 1. Uniform Method of Registration - The model procedures recommend that states adopt a uniform procedure for registration of investment company securities. The model procedures require the submission of the uniform application, Form U-1, for initial registrations, amendments and renewals (if a material change has occurred). Form U-1 will be used by the SRD for purposes of electronic filing and it is anticipated that the Form U-1 will also be accepted by the Securities and Exchange Commission's EDGAR system. Revisions to Form U-1 to accommodate a fifty-state filing on a single form are currently being drafted by the NASAA Technology Committee and will be issued for public comment in the next few months. 2. Uniform Expiration/Renewal Date. A mutual fund will be assigned an expiration date for the registration or renewal of its securities two months after the fund's fiscal year end. A unit investment trust will be given an expiration date one year after the date of SEC effectiveness even if the trust goes effective in a particular state after that date. 3. Uniform Method of Renewing and Reporting. A mutual fund will be required to renew and report sales within two months of the expiration of its fiscal year end by filing Form USR-1. However, if a material change has occurred (e.g., events triggering a Rule 485(a) filing on the federal level), a mutual fund would also file an amended Form U-1. A

unit trust will be required to report its sales within sixty days of the earlier of voluntary termination or expiration of the registration statement. If necessary, a unit trust will renew its registration prior to the expiration of the initial registration (even though reporting of sales may occur after the renewal date) by filing Form U-1. It should be noted that the NASAA Committee had originally proposed for adoption a revised Form USR-1 which would have required sales and fee information to be included for all states. Based upon the Institute's comments and objection, the revised form was withdrawn from the proposal pending additional study and input from the investment company industry. The Institute will be working with the NASAA Committee to revise Form USR-1.

5. Indefinite Registration. The model procedures strongly recommend that states adopt indefinite registration of investment company securities as a means of preventing oversales. Two methods of indefinite registration are recommended. The first, a "true indefinite registration" would require payment of a registration fee based upon actual sales in a state. The second, would provide registration of an indefinite amount of securities by payment of a maximum fee. However, at the urging of the Institute, the model procedures also provide that mutual funds and unit trusts still be allowed the option of registering a definite amount of securities and paying less than the maximum registration fee. If a state elects not to adopt indefinite registration, the model procedures recommend adoption of the uniform method of registration and renewal to ensure that the filings and payment of fees be made on a uniform basis.

6. Oversales. The model procedures encourage all states to revise their method of registration to eliminate oversales. States are encouraged not to require rescission in the event of an oversale inasmuch as an oversale is only a technical violation concerning the amount registered and not a fraudulent sales practice. The model procedures recommend that issuers be allowed to register the oversold securities by paying a "reasonable fee" within two months of the expiration, termination, or fiscal year end of the registration. "Excessive penalty fees" should be avoided.

7. States with the Blue Chip Exemption. The model procedures encourage those states which have adopted the blue chip exemption for qualified investment companies to adopt the same timetable for filing notices to claim the exemption, i.e., renew the exemption within two months of the expiration of the fund's fiscal year end. Provision will be made on the revised Form USR-1 to claim the blue chip exemption. The model procedures also set forth other recommendations concerning two-step registration, evaluation of requisite filings and implementation of the model procedures. The effective date of the model procedures is November 15, 1992 (sixty days after the date upon which the vote for adoption occurred). However, some states may exercise their discretion and adopt portions of the model procedures before the effective date. \* \* \* The Institute will continue to work with NASAA, the relevant NASAA Committees and the individual states to achieve uniformity of state registration procedures. In particular, the Institute will be selecting certain states to encourage adoption of the "true indefinite registration" provision (e.g., Minnesota, Texas and Washington). We will keep you informed of developments. Patricia Louie Assistant Counsel Attachment