

Regulatory Circular RG 92-59

DATE: November 11, 1992

TO: The Membership

FROM: Department of Financial Compliance

RE: Extension of Credit for SuperFund Shares,
SuperUnits and SuperShares

The purpose of this memorandum is to explain the prohibitions of Section 11(d)(1) of the Securities Exchange Act of 1934, and certain exemptions from those prohibitions in SEC Rules 11d1-1 and 11d1-2 thereunder, as they pertain to the extension or maintenance of credit for customers on SuperFund Shares, SuperUnits, or SuperShares.

Under Section 11(d)(1) it is unlawful for a broker-dealer to effect any transaction in connection with which, directly or indirectly, it extends, maintains or arranges for credit to a customer on any security which was part of a new issue in which the broker-dealer participated as a member of a selling group within the past 30 days. Rule 11d1-1 provides certain exemptions from this prohibition including exemptions applicable when (i) the broker-dealer has not sold the security to the customer or bought the security for the customer's account or (ii) the customer is a broker-dealer or a bank.

Because mutual funds and unit investment trusts are deemed to be "new issues" that are continually in distribution, the thirty day period referred to in Section 11(d)(1) might never run. However, SEC Rule 11d1-2 provides an exemption from Section 11(d)(1) for such securities provided that the security has been owned by the person to whom credit is extended for more than 30 days. Although Section 11(d)(1) and the 30 day holding period apply only to members of a selling group, broker-dealers must be aware that the SEC has generally taken the view that a broker-dealer "distributing" mutual fund shares or interests in a unit investment trust "either as principal underwriter or as a retailer" is a member of the selling group.

Accordingly, the Exchange is presently advising broker-dealers that they should not maintain, extend or arrange credit on SuperFund Shares, SuperUnits, or SuperShares except in compliance with the 30 day holding period of Rule 11d1-2.

This Regulatory Circular supersedes Regulatory Circular RG 92-57.

Questions regarding this memorandum should be directed to Diane Malley at (312) 786-7924 or Rich Lewandowski at (312) 786-7183.

(RG92-57 Revised)