

MEMO# 2440

January 4, 1991

INSTITUTE COMMENTS ON PROPOSED TEXAS RULE

January 4, 1991 TO: STATE LIAISON COMMITTEE NO. 1-91 RE: INSTITUTE COMMENTS ON PROPOSED TEXAS RULE _____ As we previously informed you, the Texas State Securities Board recently proposed for public comment an amendment to Section 123.2 of the Texas Administrative Code that would exclude securities eligible for resale pursuant to Rule 144A of the Securities and Exchange Commission from the current 15% investment limitation in restricted securities. (See Memorandum to State Liaison Committee No. 29-90 dated November 30, 1990.) The Institute submitted a comment letter supporting the proposed amendment since the proposed amendment, if adopted, would greatly benefit mutual funds by allowing such funds to utilize the liberalized guidelines recently adopted by the SEC with respect to restricted securities. The Institute also recommended that the current provision excluding bonds or other debt obligations customarily sold to institutional investors from the category of unmarketable investments not be deleted from the proposed amendment to Section 123.2(3) since there may be some securities which, although they may not qualify as Rule 144A securities, are marketed to institutional investors and for which an active and institutional market exists. The Institute further recommended that the Securities Board continue to re-examine the necessity of the other limitations and restrictions contained in Section 123.2. Such provisions include restrictions on lending, short sales, investing in warrants, real estate, oil, gas and other mineral leases. Inasmuch as these provisions are concerns that are effectively dealt with on the federal level by the SEC, the Institute noted that such could be repealed by the Securities Board without jeopardizing investor protection. * * * Attached is a copy of the Institute's comment letter. We will keep you advised of further developments. Patricia Louie Assistant General Counsel Attachment