

**MEMO# 2764**

May 16, 1991

## **INSTITUTE SUBMISSION TO SEC STAFF ON FUND LIABILITY FOR TELEPHONE TRANSACTIONS**

May 16, 1991 TO: SEC RULES COMMITTEE NO. 28-91 TRANSFER AGENT ADVISORY COMMITTEE NO. 25-91 RE: INSTITUTE SUBMISSION TO SEC STAFF ON FUND LIABILITY FOR TELEPHONE TRANSACTIONS \_\_\_\_\_ As we recently informed you, the Institute has learned that the SEC staff is concerned about language in fund prospectuses relieving the fund or its affiliates of any liability for acting upon instructions in connection with telephone redemptions or exchanges. (See Memorandum to SEC Rules Committee No. 11-91, dated February 6, 1991.) The staff advised the Institute that it believed that such disclosure may be inconsistent with Section 17(i) of the Investment Company Act and Article 8 of the Uniform Commercial Code. In response to the staff's concern, the Institute submitted the attached memorandum prepared by outside counsel which concludes that the limitation of liability in connection with telephone transactions does not violate those provisions of the Investment Company Act or the UCC. In addition, the Institute noted in its transmittal letter that most mutual funds have implemented various safeguards to protect against fraudulent telephone transactions. The Institute also explained that the right to conduct telephone transactions is a service that shareholders have greatly utilized and, increasingly, have come to expect. Finally, the Institute stated that if funds were not permitted to limit liability in connection with such transactions, the liability could shift from those shareholders who have chosen to avail themselves of telephone privileges to all shareholders of the fund, since any investor losses borne by the fund (or increases in its insurance premiums) will reduce its earnings. We will keep you informed of developments. Amy B.R. Lancellotta Assistant General Counsel Attachment

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