

**MEMO# 8719**

March 13, 1997

## **INSTITUTE COMMENTS ON TEXAS RULE PROPOSAL TO IMPLEMENT NSMIA**

\* See Memorandum to SEC Rules Committee No. 16-97, Small Funds Committee No. 3-97, State Liaison Committee No. 2-97 and Unit Investment Trust Committee No. 7-97, dated February 7, 1997. March 13, 1997 TO: SEC RULES COMMITTEE No. 30-97 SMALL FUNDS COMMITTEE No. 5-97 STATE LIAISON COMMITTEE No. 4-97 UNIT INVESTMENT TRUST COMMITTEE No. 17-97 RE: INSTITUTE COMMENTS ON TEXAS RULE PROPOSAL TO IMPLEMENT NSMIA

As we previously informed you, in February the Texas State Securities Board (the "Board") proposed for comment a series of rules and rule amendments that were intended, in part, to accommodate the National Securities Markets Improvement Act of 1996 ("NSMIA").\* The rules were proposed in lieu of the Board recommending any legislative changes to the Texas Securities Act this year. Attached is a copy of the comment letter the Institute filed with the Board. In its letter, the Institute recommends that the Board amend the proposal to: Delete any reference to notice filers as "applicants" or to their obtaining "authorization" from the Board prior to offering or selling securities pursuant to a notice filing; Delete the provision in the proposed definition of "federal covered security" that would exclude from such definition any federal covered securities for which a non-payment or underpayment of fees has not been promptly remedied. As discussed in detail in the Institute's letter, we believe this exclusion is unnecessary, inappropriate, and inconsistent with provisions being enacted in other states; Replace the existing manual exemption as found in Rule 109.7 with the Revised Manual Exemption as adopted by NASAA in 1996. [The major difference between the current exemption and the revised exemption is that the revised exemption is available to issuers if information concerning their offering is available through the SEC's EDGAR system.]; Eliminate the need for issuers to annually file a consent to service of process; Eliminate any reference to the "Securities Registration Depository" in the rule permitting the electronic filing of documents; Preserve the ability of issuers of covered securities to file a copy of their federal registration statement in lieu of filing page one of Form U-1; Clarify that a notice filing is effective upon receipt by the Board; Exclude institutional investors when determining the number of clients an investment adviser has for purposes of claiming the de minimis exemption from registration and permit notice filers to claim such exemption; Ensure that provisions regulating the conduct of investment advisers be appropriately tailored to apply only to state-registered investment advisers; and Clarify that, in the event the Board requires the registration of the securities of an investment company (i.e., based upon a failure to promptly remedy a nonpayment or underpayment of fees), such registration authority is limited by NSMIA and would not permit the Board to subject such offering to any fairness or other merit standards. Tamara Cain Reed Associate Counsel Attachment (in .pdf format) Note: Not all recipients of this

memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8719.

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