

**MEMO# 3384**

December 20, 1991

# **INSTITUTE LETTER TO SEC ON WAIVERS OF LOADS FOLLOWING REDEMPTIONS FROM UNAFFILIATED FUNDS**

December 20, 1991 TO: SEC RULES COMMITTEE NO. 76-91 RE: INSTITUTE LETTER TO SEC ON WAIVERS OF LOADS FOLLOWING REDEMPTIONS FROM UNAFFILIATED FUNDS

The Institute recently submitted the attached letter to the SEC staff challenging a recent interpretation of Section 11 of the Investment Company Act, which governs exchange offers. The staff has stated that the practice of some funds of waiving their front-end sales loads for purchases that occur within a specified period of time following the redemption of shares of an unaffiliated fund violates Section 11 in cases where the redeemed fund assesses a contingent deferred sales load. The staff's theory is that such a transaction constitutes an exchange offer that is made on a basis other than relative net asset value. In the letter, the Institute states that the type of transaction described above is not covered by Section 11, since it raises none of the policy concerns that Section 11 is meant to address. The letter notes that, if anything, the waiver of a front-end load would reduce the possibility of an investor being induced to transfer his investment solely for the purpose of exacting an additional sales charge. The letter also notes that the staff's position will prove detrimental to investors by requiring them to pay additional sales charges, discouraging legitimate changes in their portfolios, and restraining competition among fund sponsors, including encouraging the use of CDSLs as a means for avoiding competition. Craig S. Tyle Deputy General Counsel Attachment

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