

**MEMO# 2568**

February 28, 1991

## **INSTITUTE RESPONDS TO NEW JERSEY DISCLOSURE CONCERNS**

February 28, 1991 TO: STATE SECURITIES MEMBERS NO. 10-91 SEC RULES COMMITTEE NO. 15-91 RE: INSTITUTE RESPONDS TO NEW JERSEY DISCLOSURE CONCERNS

As we previously informed you, the Institute was advised that the New Jersey Securities Bureau had taken the position that the disclosure in a mutual fund prospectus was inadequate without the statement of additional information ("SAI"); therefore, the information in the SAI had to be included in the prospectus or the SAI had to be delivered with the prospectus to New Jersey investors. The Institute wrote to the Bureau stating that this position was contrary to the requirements of the SEC and undermined the purpose and intent of Form N-1A. (See Memorandum to State Securities Members No. 7-91 and SEC Rules Committee No. 9-91, dated January 31, 1991.) The Bureau subsequently wrote to the Institute stating that the "quality of disclosure in mutual funds has decreased to the point where it appears to be adversely affecting the interests of investors." According to the Bureau, investors are not receiving the disclosure necessary to make informed investment decisions because material information is included in the SAI rather than the prospectus. The Bureau lists several items in its letter which it states are not included in the prospectus. The Institute responded to the Bureau's concerns by meeting with the staff and submitting a detailed follow-up letter that outlines the purpose and goal of prospectus simplification and the disclosure currently required by Form N-1A. The letter addresses the specific disclosure inadequacies expressed by the Bureau with respect to a fund's investment objective, risk factors and fees and notes that disclosure with respect to each of those items is required to be included in a fund's prospectus. The Institute objected to the inclusion of additional information not currently required by Form N-1A in that such would unnecessarily lengthen a fund's prospectus without providing any additional meaningful or material information to investors. Specifically, the letter states that information with respect to a fund's officers and directors is not material to investors in making an investment decision and should not be included in a fund's prospectus. We also objected to the inclusion of disclosure with respect to all investment restrictions since Item 4 of Form N-1A specifically eliminates the need for "negative disclosure" in a fund prospectus. The letter emphasized that investors need to know what a fund can and will do rather than a list of everything a fund cannot do. We further disagreed with the Bureau's position that investors need to be provided with all available information at one time and reaffirmed our commitment to the two-part disclosure format. The letter concludes by stating that based upon the discussion at our meeting, it is our understanding that if a mutual fund prospectus contains full disclosure of all material information, then the fund sponsor need not expand the disclosure currently contained in the prospectus or deliver the SAI with the prospectus. If this is not the Bureau's understanding, we requested that they contact us as soon as possible. \* \* \* A copy of the

Institute's letter to the Bureau and the Bureau's letter to the Institute is attached. We will keep you advised of further developments. Patricia Louie Assistant General Counsel  
Attachments

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