

MEMO# 4545

March 1, 1993

TEXAS PROPOSES AMENDMENT TO MONEY MARKET FUND DESIGNATION FOR PURPOSES OF REDUCED REGISTRATION FEE

1 1 The registration fee for money market funds qualifying for the conditional exemption is 1/10th of 1% of the first \$10 million, 1/20th of 1% of the next \$10 million, 1/50th of 1% of the next \$30 million, 1/100th of 1% of the next \$50 million and 1/200th of 1% of the remainder. All other money market funds must pay a fee of 1/10th of 1% of the aggregate amount registered in Texas. March 1, 1993 TO: SEC RULES COMMITTEE NO. 15-93 STATE LIAISON COMMITTEE NO. 10-93 RE: TEXAS PROPOSES AMENDMENT TO MONEY MARKET FUND DESIGNATION FOR PURPOSES OF REDUCED REGISTRATION FEE

_____ Texas is one of the four remaining states without a maximum registration fee. However, many market money funds qualifying for the conditional exemption provided in 123.3 of the Texas Administrative Code are able to use a special reduced registration fee formula which results in considerable savings to these funds.¹¹ Section 123.3 specifically provides, as one of the conditions for qualifying for the condition exemption, that a money market fund may not charge a commission or redemption fee. However, the staff of the Texas State Securities Board has taken the position that 12b-1 fees will be treated as "commissions". Thus, some money market funds with a 12b-1 fee have been denied the use of the exemption and therefore are unable to utilize the reduced fee formula. Last year, the Institute contacted the Securities Board to request review of the staff position with respect to treating 12b-1 fees as "commissions" for purposes of qualifying for the conditional exemption, particularly in light of the rationale underlying the exemption, i.e., to alleviate the enormous financial burden on money market funds that would result if they were required to calculate their registration fee on the same basis as other issuers. (See Memorandum to SEC Rules Committee No. 14-92 and State Liaison Committee No. 11-92, dated March 19, 1992.) In subsequent discussions the Institute held with the staff of the Securities Board, the staff indicated that they did not necessarily agree with this interpretation of the rationale for the conditional exemption but would be willing to consider other alternatives with respect to the criteria for claiming the conditional exemption. The Texas State Securities Board recently proposed an amendment to 123.3 to expand the category of money market funds qualifying for the conditional exemption. As proposed, the following conditions must be met in order to qualify for the exemption: (1) the fund must not pay or charge sales commissions or redemption fees except for a nominal exchange fee which may not be used for sales expenses or in lieu of an initial sales charge or redemption fee; (2) the fund must not pay or charge asset-based charges in lieu of an initial sales charge or redemption fee;

(3) the fund must not pay or charge aggregate asset-based charges for sales promotion activities and/or the servicing of shareholder accounts in excess of .25% of average net assets; and (4) except for mergers, consolidations, or acquisitions of assets, the fund's investments in other investment companies must be limited to 10% of average net assets. The investment companies must have identical objectives and similar investments to those of the fund. No management or advisory fees may be charged by the fund's manager or adviser for such investments. Other conditions, which basically reiterate the provisions of SEC Rule 2a-7, are also set forth in the proposed amendment. In addition, the Securities Board has proposed two new provisions regarding the forms for money market funds qualifying for the exemption. Section 133.26 has been proposed in order to authorize a form to request the conditional exemption. Section 133.27 has been proposed to amend the year-end report of sales by a money market fund and would replace 133.28. A copy of the proposed amendment is attached. Comments on the proposed amendment are officially due on March 9, 1993; however, the staff of the Securities Board has informally extended the comment period to March 31, 1993. Please contact me with any comments you would like incorporated in the Institute's comment letter no later than Monday, March 22, 1993. My direct telephone number is 202/955-3517 or you may fax your comments to me at 202/659-1519. Patricia Louie Associate Counsel Attachment

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