

MEMO# 8156

August 15, 1996

HAWAII ASSESSES FEE FOR BLUE CHIP EXEMPTION AT PORTFOLIO OR SERIES LEVEL; TRANSITION PERIOD; GOOD FAITH EFFORTS TO COMPLY

* This position is inconsistent with the Institute's instructions to pay \$200 per fund. See Memorandum to State Securities Members No. 22-96, Unit Investment Trust Members No. 30-96 and Small Funds Committee No. 14-96, dated July 11, 1996. August 15, 1996 TO: SMALL FUNDS COMMITTEE No. 16-96 STATE SECURITIES MEMBERS No. 29-96 UNIT INVESTMENT TRUST MEMBERS No. 36-96 RE: HAWAII ASSESSES FEE FOR BLUE CHIP EXEMPTION AT PORTFOLIO OR SERIES LEVEL; TRANSITION PERIOD; GOOD FAITH EFFORTS TO COMPLY

In connection with the recent amendments to the Hawaii Uniform Securities Act that require funds to either register or file an application to claim the blue chip exemption prior to August 31, several issues have arisen, including the request by the Department of Commerce and Consumer Affairs ("DCCA") that fees for the exemption be submitted at the portfolio rather than the fund level, the possibility of a transition period for funds with fiscal year ends close to the August 31 deadline, and good faith efforts to comply with the registration and exemption provisions. The Institute has had several contacts with the DCCA in an effort to resolve these issues and below reports on the status of these discussions.

Exemption Fees at Portfolio or Series Level The DCCA has requested, either by deficiency letter or telephone call, that funds pay fees for the blue chip exemption at the portfolio or series level, rather than the fund level.* The Institute has objected to this, noting that neither the statute nor the exemption form refers to portfolios or series. Unfortunately, the DCCA is still taking the position that the \$200 initial fee, as well as the \$50 renewal fee, must be paid per portfolio or series. The Institute is continuing discussions with the DCCA on this matter; in the meantime, however, you should be advised that exemption forms submitted with a \$200 per fund fee will result in a deficiency notice. We are aware that at least one fund has paid the requested fee under protest. Transition Period Funds with fiscal year ends close to the August 31 deadline for filing with the DCCA would be required to file the initial application to claim the blue chip exemption and, within a very short period, file a renewal. This situation is similar to that which has arisen when other states have adopted uniform registration dates. The Institute raised this inequity with the DCCA and provided a copy of another states order addressing the transition period. Although the DCCA is not expected to adopt a formal transition policy, it has indicated that it may allow funds that would have an initial exemption period of less than 2 months to claim the blue chip exemption for a one-time period of up to 14 months. The DCCA has said it will entertain requests for a longer initial exemption period from individual funds and will

grant such requests on a case-by-case basis. Those members who wish to request an extended initial exemption period should call Henry Tanji, Deputy Commissioner, at (808) 586-2744. Good Faith Efforts to Comply Because all funds currently selling shares in Hawaii must register or claim the blue chip exemption prior to August 31, there was a concern that the DCCA would be unable to process all of the registrations or applications for claiming the exemption before the deadline. Conceivably, this could result in those securities already available in Hawaii being deemed unregistered and subject to penalties and other remedies. The DCCA has advised the Institute that, if funds have made a good faith effort to comply (i.e., have registered or filed the exemption form by the deadline but deficiencies have not been remedied) and make reasonable attempts to resolve comments or deficiencies in a timely manner, no action will be taken against them. If you have any questions about these or any other matters, please call me at (202) 326- 5813. Marguerite C. Bateman Assistant Counsel

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