

MEMO# 2580

March 5, 1991

INSTITUTE TO APPEAL ADVERSE DECISION IN MINNESOTA LAWSUIT

March 5, 1991 TO: BOARD OF GOVERNORS NO. 15-91 STATE LIAISON COMMITTEE NO. 6-91
UNIT INVESTMENT TRUST COMMITTEE NO. 8-91 RE: INSTITUTE TO APPEAL ADVERSE
DECISION IN MINNESOTA LAWSUIT

As you know, the Institute commenced a lawsuit in December 1987 against the State of Minnesota and the Commissioner of Commerce challenging the constitutionality of Minnesota's disparate registration fee structure. The petition alleged that the registration fee structure violates the due process, equal protection and commerce clauses of the U.S. Constitution and the due process and equal protection clauses of the Minnesota Constitution. The Institute requested that the State be enjoined from enforcing the provision in the Minnesota Securities Act that prevents mutual funds and unit trusts from relying on the fee cap provision used by all other issuers. (See Memorandum to Board of Governors No. 66-87, State Securities Members No. 43-87 and Unit Investment Trust Members No. 56-87, dated December 21, 1987.) The parties submitted cross-motions for summary judgment and a hearing was held on October 30, 1990. The Minnesota District Court subsequently granted the State's motion for summary judgment, stating that "as a matter of law [the Institute] cannot sustain its burden of proving beyond a reasonable doubt that the statutory provision in question violates the due process or equal protection clauses of the United States or Minnesota Constitutions or the commerce clause of the United States Constitution." A copy of the court's order is attached. The Institute will be appealing the decision to the Minnesota Court of Appeals. * * * We will keep you informed of developments. Patricia Louie
Assistant General Counsel Attachment