

**MEMO# 2520**

February 6, 1991

# **SEC STAFF POSITION ON DISCLOSURE LIMITING LIABILITY OF FUND ACTING ON TELEPHONE REDEMPTION INSTRUCTIONS; LIQUIDITY OF MUNICIPAL LEASE SECURITIES**

February 6, 1991 TO: SEC RULES COMMITTEE NO. 11-91 RE: SEC STAFF POSITIONS ON  
DISCLOSURE LIMITING LIABILITY OF FUND ACTING ON TELEPHONE REDEMPTION  
INSTRUCTIONS AND ON LIQUIDITY OF MUNICIPAL LEASE SECURITIES

A. Disclosure Limiting Liability of Fund Acting on Telephone Redemption Instructions The Institute has learned that the SEC staff is raising a concern regarding language in fund prospectuses relieving the fund or its affiliates of any liability for acting upon instructions in connection with telephone redemptions or exchanges. It is our understanding that such disclosure is fairly common in prospectuses and/or account applications. An example of the language that the staff has objected to is: Neither the Fund nor the Transfer Agent will be responsible for acting upon any instructions believed by them to be genuine. The staff's concern is that such disclosure may be inconsistent with Section 17(i) of the Investment Company Act, which prohibits a fund from indemnifying an underwriter or investment adviser for gross negligence. The staff has informed at least one registrant that it will continue to object to this disclosure pending receipt of a letter explaining the rationale for this language under state law (including the Uniform Commercial Code) and under the Investment Company Act. We also have been advised that the staff is considering raising this concern on an industry-wide basis. We wish to obtain your view on whether the staff's position on this disclosure is of significant concern to your firm. In addition, we would be interested in learning whether you have received this comment and how the issue was resolved.

B. Liquidity of Municipal Lease Securities As many of you are aware, the staff stated in its first generic comment letter that it "considers municipal lease securities to be illiquid because of the inefficiency and thinness of the market in which they are traded." ( See Memorandum to SEC Rules Members No. 4-90, dated January 19, 1990.) Several members have objected to the staff's position, since many of these types of securities are apparently liquid. The staff is currently reexamining this issue and has requested input from Institute members as to the liquidity of these securities. Specifically, the staff has requested information as to which types of municipal lease securities should be characterized as liquid, along with data demonstrating the liquidity of those securities (e.g., activity in the secondary market). \* \* \* Please provide me with your comments on the telephone redemption disclosure issue described above and information on the liquidity of municipal lease securities by March 1, 1991. My direct

number is 202/955-3523 and our fax number is 202/659-1519. Amy B.R. Lancellotta  
Assistant General Counsel

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