

MEMO# 3029

August 20, 1991

INSTITUTE SUBMITS FOLLOW-UP COMMENT LETTER TO OHIO

August 20, 1991 TO: STATE SECURITIES MEMBERS NO. 35-91 RE: INSTITUTE SUBMITS
FOLLOW-UP COMMENT LETTER TO OHIO

As you know, for the past few years the Institute has been working with the Ohio Securities Division on amendments to certain of its administrative rules, particularly with respect to the provisions specifically relating to the investment restrictions on mutual funds and retroactive registration of investment company securities. On June 12, 1991, the Ohio Securities Division published for public comment amendments to certain of its administrative rules and a public hearing was held on July 30, 1991 to elicit comment regarding the proposed amendments. The Institute testified at the hearing in support of the proposed amendment to permit a mutual fund or unit trust to retroactively qualify securities sold by the fund or trust in excess of the amount it had previously registered. Currently, a fund or trust must conduct a rescission offer in the event of an oversale. The Institute noted that this proposal recognizes that a rescission offer is inappropriate in the event of an oversale since investors are not harmed due to the oversale, particularly since shares have been registered with the Ohio Securities Division and the Securities and Exchange Commission and the only failure that has occurred is the failure to accurately predict the number of shares that will be sold in Ohio. The Institute also urged the Division to amend Rule 1301:6- 3-09(E)(1)(I) which prohibits the investment of more than ten percent of a mutual fund's total assets in restricted securities, particularly in light of the SEC's adoption of Rule 144A. (It appeared from a reading of the proposed amendments that this limitation would no longer apply to mutual funds; however, immediately prior to the hearing, the Institute was informed that the language removing the investment limitation on restricted securities was inadvertently deleted and would still apply to mutual funds.) In addition to the oral testimony at the hearing, the Institute submitted the attached follow-up comment letter urging the Division to delete the investment restriction with respect to restricted securities, or in the alternative, to provide mutual funds the ability to invest in Rule 144A securities. The Institute noted that elimination of this investment restriction would be consistent with a resolution adopted by NASAA in support of the policy considerations set forth in the release adopting Rule 144A and actions taken by the states of Wisconsin and Texas. * * * The Securities Division will be issuing amendments to the proposed rules in the near future. We will keep you advised of further developments. Patricia Louie Assistant General Counsel Attachment

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