

MEMO# 2482

January 22, 1991

INSTITUTE COMMENTS ON ADDITIONAL ISSUES RAISED BY WISCONSIN STAFF REGARDING NON-FUNDAMENTAL OBJECTIVES

January 22, 1991 TO: STATE SECURITIES MEMBERS NO. 5-91 SEC RULES COMMITTEE NO. 6-91 RE: INSTITUTE COMMENTS ON ADDITIONAL ISSUES RAISED BY WISCONSIN STAFF REGARDING NON-FUNDAMENTAL OBJECTIVES

As we previously informed you, the staff of the Wisconsin Securities Commission ("Commission") has taken the position that pursuant to its interpretation of Section SEC 3.09(1)(D), Wis. Adm. Code, a mutual fund must obtain shareholder approval any time a fund wished to change its "basic objectives and policies" to non-fundamental notwithstanding the requirements of the Investment Company Act of 1940. The Institute met with the staff of the Commission to discuss the foregoing interpretation of Section SEC 3.09(1)(d). Based upon that meeting, it was our understanding that the Commission would require mutual funds that have not designated their primary investment objective as a fundamental investment policy to submit an undertaking to the Commission that the fund would notify Wisconsin shareholders in advance of any change in the fund's investment objective. (See Memorandum to State Securities Members No. 34-90 and SEC Rules Committee No. 66-90, dated December 18, 1990.) However, since that meeting, the staff has raised additional issues. Specifically, the staff has requested that (1) any prior notice of a change in a fund's investment objective be made by certified mail, (2) all sales charges paid by shareholders who purchased shares within 12 months of the change be returned, with the fund's adviser assuming the liability, and (3) all shareholders in any such fund be permitted to exchange into any other fund within the same complex at net asset value. The Institute has written to the Commissioner stating that each of these proposals is unnecessary and would impose burdens on funds far in excess of those necessary to address the state's concerns. The Institute's letter addresses each of the staff's additional proposals as follows: 1. Certified Mail. The Institute's letter states that sending notices by certified mail imposes significant added costs upon funds and that no reason has been offered by the staff of the Commission for imposing this requirement upon funds in this situation. 2. Refund of Sales Charges. The Institute believes it would be inappropriate to require that all sales charges paid by shareholders who purchased shares within 12 months of a fund's changing its investment objective be refunded for several reasons. A large proportion of any sales load is generally paid to the individual broker effecting the transaction and it would not be possible for funds to recoup these sales loads to refund to investors. The Institute noted that even if this were

not so, it would be highly unfair to brokers, who have no control over fund policies, to give up compensation for services already performed. The letter further notes that it would be unfair to require the adviser of the fund to bear the costs of refunding any commissions or sales charges since the adviser has not received these payments and the effect would be to impose a monetary penalty on an adviser to a fund that lawfully wished to change its investment objective. Moreover, the staff has not presented any evidence that a change in a fund's investment objective indicates that shareholders have wrongly paid a sales charge because they were misled about the nature of the fund. 3. Exchanges. The Institute also believes it would be inappropriate, and unfair to other shareholders, to require that any shareholder be allowed to exchange his or her shares into any fund within the same complex at net asset value. However, the Institute has no objection to a requirement that funds changing their investment objective charge no more than the differential between the load assessed on the purchased fund and that assessed on the redeemed fund. Such a requirement would be consistent with the provisions of Rule 11a-3 of the Investment Company Act of 1940. * * * A copy of the Institute's letter to the Wisconsin Securities Commission is attached. We will keep you advised of further developments. Patricia Louie
Assistant General Counsel Attachment

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