

**MEMO# 1733**

February 26, 1990

# **PROPOSED LEGISLATION CONCERNING SOFT DOLLAR AND TRANSACTION COSTS DISCUSSED BY CALIFORNIA SENATE COMMISSION**

- 1 - February 26, 1990 TO: INVESTMENT ADVISERS COMMITTEE NO. 5-90 RE: PROPOSED LEGISLATION CONCERNING SOFT DOLLAR AND TRANSACTION COSTS DISCUSSED BY CALIFORNIA SENATE COMMISSION

On January 26, 1990, the Senate Commission on Corporate Governance, Shareholder Rights and Securities Transactions held a meeting to discuss, among other things, a legislative proposal (Senate Bill 1131) that would require disclosures about soft dollar arrangements and that transactions be executed at the lowest responsible transaction cost available. A copy of the Senate Commission agenda and proposed legislation are attached. The proposed legislation would require that each securities transaction for a "governmental investor" be executed by a broker-dealer which offers the lowest responsible transaction cost available, regardless of whether the transaction is carried out pursuant to a soft dollar and directed brokerage arrangement. "Governmental investor" is broadly defined in the proposal. After January 1, 1991, the proposed legislation would require any contract between an investment manager and a "governmental investor" to require the investment manager, among other things: (a) to maintain records of services provided pursuant to soft dollar and directed brokerage arrangements; (b) to clearly define the services which may be provided by a broker-dealer pursuant to soft dollar and directed brokerage arrangements; and (c) to disclose the following: (1) a list of all services provided pursuant to soft dollar and directed brokerage arrangements; (2) the justification for such arrangements; (3) the maximum percentage of the investment transactions of the governmental investor planned for use in soft dollar and directed brokerage arrangements; (4) an annual statement of all services provided during the previous year under soft dollar and directed brokerage arrangements; and (5) a determination of whether each service provided under soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor is proprietary or is being shared by other clients of the investment manager.

- 2 - Several amendments to the proposal have been made although they have not yet been incorporated into the attached draft. These include: (1) In Section 6930(a), insert in line 6 after "investment discretion over" and before "public funds" and in line 7 after "or over" and before "Public pension:" "\$10 million;" (2) In Section 6930, add new section (c): "(c) 'Transaction costs' means the overall cost of the transaction including but not limited to commissions, services, and price of securities;" (3) In Section 6931 at line 1, after "Each securities transaction" and before "for a governmental investor," add: "which is in excess of

\$1 million;" (4) In Sections 6932 (a),(c),(d)(1), and (d)(4), before the word "services," add "billed;" (5) In Section 6932(d)(1), after "directed brokerage arrangements" and before ".", add: "with respect to investment transactions for governmental investors;" (6) In Section 6933, add "or broker-dealer" after "If an investment manager" and before "violates" and after "the investment manager" and before "shall be voidable;" and (7) In Section 6933, after "any provision of this chapter," and before "the contract between", add: "the sole and exclusive remedy available is as follows:". Hearings on the proposed legislation are scheduled for late March or early April. Therefore, if you have any comments you would like the Institute to make, please contact the undersigned by March 9, 1990. Robert L. Bunnan, Jr. Assistant General Counsel Attachment

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