

MEMO# 3611

March 19, 1992

INSTITUTE SUBMITS COMMENTS TO TEXAS ON STAFF 12B-1 FEE POSITION

March 19, 1992 TO: SEC RULES COMMITTEE NO. 14-92 STATE LIAISON COMMITTEE NO. 11-92 RE: INSTITUTE SUBMITS COMMENTS TO TEXAS ON STAFF 12B-1 FEE POSITION

As you know, Texas is one of the four remaining states without a maximum registration fee. However, money market funds qualifying for the conditional exemption provided in Section 123.3 of the Texas Administrative Code are able to use a special reduced registration fee formula which results in considerable savings to these funds. Section 123.3 specifically provides, as one of the conditions for qualifying for the exemption, that a money market fund may not charge a commission or redemption fee. The Institute has been advised by certain of its members that the staff of the Texas Securities Board is taking the position that 12b-1 fees will be treated as "commissions" for purposes of qualifying for "money market fund" status. It is our understanding that some money market funds with a 12b-1 fee have been denied the use of the exemption and are therefore unable to utilize the reduced fee formula. The Institute submitted the attached comment letter to the Texas Securities Board which sets forth the reasons why the staff's position is inappropriate. In its letter, the Institute initially notes that treating 12b-1 fees as commissions is inconsistent with the rationale underlying the exemption, i.e., to alleviate the enormous financial burden on money market funds that would result if they were required to calculate their registration fee on the same basis as other issuers. Moreover, there are certain fundamental differences between 12b-1 fees and commissions. In particular, a 12b-1 fee is an ongoing fund-level expense unlike a commission or redemption fee which is a transactional charge. Furthermore, 12b-1 fees are subject to strict requirements pursuant to Rule 12b-1 of the Investment Company Act of 1940. It is our understanding that the Texas Securities Board will be reviewing the staff's position in the near future. We will keep you advised of further developments. Patricia Louie
Assistant General Counsel Attachment