

MEMO# 3319

December 4, 1991

MINNESOTA COURT OF APPEALS UPHOLDS CONSTITUTIONALITY OF DISPARATE REGISTRATION FEE STRUCTURE

December 4, 1991 TO: BOARD OF GOVERNORS NO. 84-91 STATE LIAISON COMMITTEE NO. 21-91 UNIT INVESTMENT TRUST COMMITTEE NO. 43-91 RE: MINNESOTA COURT OF APPEALS UPHOLDS CONSTITUTIONALITY OF DISPARATE REGISTRATION FEE STRUCTURE

As we previously informed you, the Institute commenced a lawsuit in December 1987 against the State of Minnesota and the Commissioner of Commerce challenging the constitutionality of Minnesota's disparate registration fee structure. The fee charged for registration of securities issued by mutual funds and unit investment trusts is 1/20th of 1% of the aggregate offering amount registered in Minnesota, without a maximum fee; all other issuers of securities pay a maximum registration fee of \$300. On May 14, 1991, the Minnesota District Court granted the State's motion for summary judgment and dismissed the Institute's complaint on the grounds that the Institute had not proved beyond a reasonable doubt that the fee provision violates the due process or equal protection clauses of the U.S. or Minnesota Constitutions or the commerce clause of the U.S. Constitution. The Institute subsequently filed an appeal with the Minnesota Court of Appeals. (See Memoranda to Board of Governors Nos. 15- 91 and 44-91, State Liaison Committee Nos. 6-91 and 14-91 and Unit Investment Trust Committee Nos. 8-91 and 23-91, dated March 5, 1991 and June 24, 1991.) In an opinion filed on November 26, 1991, the Minnesota Court of Appeals stated that unreasonable licensing fees violate the due process clause of the U.S. Constitution. However, the court affirmed the lower court decision and upheld the constitutionality of the Minnesota fee structure even though the imposition of such fees greatly exceeds the cost of regulation. The court concluded that the statute could reasonably be interpreted to impose not only a license fee enacted pursuant to the state's police powers but also a revenue raising measure designed to collect extra revenues for the state treasury. A copy of the court's opinion is attached. The Institute will not be appealing this decision to the Minnesota Supreme Court. Patricia Louie Assistant General Counsel Attachment

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