

**MEMO# 5886**

May 13, 1994

## **TEXAS ISSUES PROPOSED LEGISLATIVE RECOMMENDATIONS FOR COMMENT**

May 13, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 34-94 STATE LIAISON COMMITTEE NO. 32-94 UNIT INVESTMENT TRUST COMMITTEE NO. 35-94 RE: TEXAS ISSUES PROPOSED LEGISLATIVE RECOMMENDATIONS FOR COMMENT

The Texas State Securities Board (the "Board") has issued for comment a package of legislative recommendations they would like to have considered during the upcoming legislative session. For the most part, the recommendations contained in the package are technical or procedural in nature. The items impacting investment companies or investment advisers are briefly summarized below. 1. Assessment of Administrative Fines: Item 1 of the package (pp. 1-4) would authorize the Texas Securities Commissioner (the "Commissioner") to assess administrative fines, after notice and opportunity for a hearing, against any person who has violated the Texas Securities Act (the "Act"). Such fine could not exceed \$10,000 per violation. 2. Civil Liability for Investment Advisers: Item 2 of the package (pp. 10-11) proposes amendments to the Act that would subject investment advisers to civil liability for (1) violating the registration provisions of the Act or (2) engaging in fraudulent conduct in connection with rendering investment advice. 3. Sales of Excess Securities: Item 11 of the package (p. 32) proposes that Section 35-1 of the Act, relating to fees for the sale of excess securities, be amended to clarify that its provisions also apply to sales of securities after the expiration of a registration. 4. Consent to Service of Process: Item 12 of the package (p. 34) would amend Section 8 of the Act to permit the Board to adopt a rule that provides that the consent to service of process, which must be filed by issuers of securities, does not need to be accompanied by the resolution of the company's board of directors, as is currently required. This amendment is necessary to accommodate filings of registration statements through the Securities Registration Depository ("SRD"), since the SRD will not accept a Form U-2A, Uniform Corporate Resolution, which is currently required in order to obtain registration in Texas. 5. Registration by Coordination: Item 14 of the package (pp. 40-43) would amend the provisions of the Act relating to registration by coordination to: (1) provide that only one copy of the prospectus need be filed along with the issuer's registration statement, rather than the three copies currently required; and (2) adopt the uniform registration/renewal dates from the NASAA "Model Registration and Reporting Procedures for Investment Companies" for mutual funds and unit investment trusts. 6. Provisions relating to Dealers, Agents and Salesmen: The Board has recommended that the grounds for denying licensure to Dealers, Agents, and Salesmen be expanded to include failing to pay administrative fines assessed by the Commissioner, and being the subject of any order that either resulted from fraudulent conduct or that restrains or enjoins conduct in connection with the purchase or sale of securities. (See Item 1 pp. 1-3.) Additionally, provisions governing the renewal of expired registrations have been clarified. (See Item 9 p.

28.) \* \* \* \* \* A copy of the proposed legislative package is attached. The Texas Securities Board has requested that any comments on it be filed by May 30, 1994. If you have any comments that you would like to have included in the Institute's comment letter, please provide them to me by phone (202/326-5825) or fax (202/326-5828) no later than Friday, May 20, 1994. Tamara K. Cain Assistant Counsel Attachment

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