

MEMO# 3470

January 23, 1992

OHIO AMENDS REGISTRATION RULES

January 23, 1992 TO: STATE SECURITIES MEMBERS NO. 5-92 UNIT INVESTMENT TRUST
MEMBERS NO. 7-92 RE: OHIO AMENDS REGISTRATION RULES

As you know, for the past several years, the Institute has been working with the Ohio Securities Divisions on amendments to certain of its administrative rules, particularly with respect to the provisions specifically relating to retroactive registration of investment company securities and investment restrictions on mutual funds. (See Memorandum to State Securities Members No. 35-91, dated August 20, 1991.) We are pleased to inform you that, effective January 17, 1992, the Ohio Securities Division adopted amendments to certain of the registration provisions for mutual funds and unit trusts. In addition, the Division redefined the term "excusable neglect" to apply to the failure to file the appropriate registration forms within a specified time period or the failure to register a sufficient number of shares in Ohio. Finally, non-substantive changes in language and internal section number references were adopted. A copy of the amended rules is attached. The following amendments relate specifically to the registration of mutual fund and unit trust securities: Rule 1301:6-3-09 - Registration by Qualification (pages 22 through 28): (1) Paragraph (B)(2)(e) is a new provision that requires the issuer, during the period of effectiveness, to advise the Division of any change in the stated investment policies, objectives or restrictions of the registration. (2) Paragraph (E) of the rule sets forth the restrictions relating to investment companies that apply regardless of the manner in which the securities are registered (i.e., registration by description or qualification). Most of these provisions -- prohibited transactions, disclosure requirements, custodial arrangements, valuation, purchasing, borrowing, restrictions on transferability, sales load restrictions, expense limitation and redemption -- have not been substantively amended. However, subparagraph (8) of the rule amends the diversification provision to prohibit the purchase of securities of any issuer, if as to 75% of the assets of the company at the time of the purchase, more than 10% of the voting securities of any issuer would be held by the company. Previously, this limitation applied to 100% of a fund's portfolio. In addition, although it appears that subparagraph (12) of the rule amends the 10% investment limitation to apply only to investments in unseasoned companies, the limitation also applies to investing in restricted securities. The Institute was advised by the staff of the Division that the language "securities of issuers which are restricted as to disposition" was inadvertently deleted from the published version of the final and proposed rules and the staff will be taking the necessary action to correct this error in the near future. (3) Paragraph (H) of the rule sets forth the procedure for renewal of a mutual fund registration or registration of additional series of a unit trust. A mutual fund may renew its registration by submitting an application, the appropriate fee, a copy of its current prospectus, a statement setting forth any material change since the previous filing, a consent to service of process and a copy of each undertaking. A unit trust may register additional series of the

trust by submitting an application, the appropriate fee, a copy of its preliminary prospectus, a consent to service of process, a notice of effectiveness or automatic effectiveness and a copy of the final prospectus. Rule 1301:6-3-391 - Retroactive exemption, qualification or registration (pages 51-53): The amendments to this rule set forth the procedure for retroactive registration. Paragraph (B)(7) of the rule has been added to specifically provide that an investment company may file an application to retroactively register securities due to "excusable neglect." The definition of "excusable neglect" includes the failure of an investment company to file an application to register securities within six months of the earliest date of the sale of unregistered securities which had been previously registered with the Division, or the failure of an investment company to file an application to register a sufficient number of securities. Please note that this procedure for retroactive registration may be claimed no more than two times in a twelve month period by the issuer or its counsel unless the issuer or its counsel establishes, in writing, to the Division that there is good cause to include the failure to timely or properly file within the definition of "excusable neglect." * * * The Institute will continue to work with the Division on amendments to Ohio's administrative rules, particularly those which impose non-uniform investment restrictions on investment companies. We will keep you advised of developments. Patricia Louie
Assistant General Counsel Attachment

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