

**MEMO# 34249**

August 11, 2022

# **ICI Settles the Lawsuit We Filed Against the California Department of Financial Protection and Innovation over Unlawful Blue Sky Fees; State Agrees to Restore Previous Fees**

[34249]

August 11, 2022

TO: ICI Members

Operations Committee

SEC Rules Committee

Transfer Agent Advisory Committee SUBJECTS: Fees and Expenses

Litigation & Enforcement RE: ICI Settles the Lawsuit We Filed Against the California Department of Financial Protection and Innovation over Unlawful Blue Sky Fees; State Agrees to Restore Previous Fees

As you may recall, in June 2022, the Institute filed suit against the California Department of Financial Protection and Innovation (DFPI) to challenge the Department's authority to increase the notice filing fees it imposed on investment companies.[\[1\]](#) Shortly after the suit was filed, the DFPI expressed its interest in settling the suit and wanted to know the Institute's settlement terms. The Institute agreed to settle the case if the DFPI: (1) rescinded the fee increase and affirms that mutual fund notice filing fees in California are to be paid at the fund/trust level and not at the series/portfolio level; (2) refunded any fees filers paid at the series/portfolio level; and (3) paid our attorneys' fees. The last element was based on the Institute's view that we should not have been required to spend money hiring attorneys to get the DFPI to comply with existing law, particularly after we have tried to resolve this matter informally before filing suit as a last resort.

I am pleased to report that the DFPI has agreed to each of our terms. Attached is the Settlement Agreement the Institute entered into with the DFPI on August 10 to resolve this matter. The court case will be dismissed once the DFPI pays the Institute's attorneys' fees as required by the Agreement. We have alerted the Blue Sky filing services to this settlement and they are prepared to apply for refunds for any of their clients that are eligible for them. If you submitted a notice filing directly to the DFPI this year and paid filing

fees at the series/portfolio level, you will need to request a refund from the DFPI as discussed in Section (3)(c) of the Agreement. This section of the Agreement requires the DFPI to notify you within 2 weeks (from August 10, 2022) of the refund process.

If you have any questions concerning this matter, please do not hesitate to let me know.

Tamara K. Salmon  
Associate General Counsel

#### **endnotes**

[1] See Institute Memorandum No. 34180, dated June 13, 2022, available at <https://www.ici.org/memo34180>. The DFPI accomplished this fee increase by announcing that, effective March 1, 2022, notice filers were to pay fees at the series/portfolio level, instead of at the trust/fund level.

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