



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

August 10, 2009

The Honorable James E. Doyle
Wisconsin Governor
State Capitol
Madison, Wisconsin 53702

Re: Opposition to Significant Fee Increase

Dear Governor Doyle:

The Investment Company Institute¹ is writing on behalf of mutual fund investors to express our strong opposition to the recent 1000% fee increase² you imposed on mutual funds sold in Wisconsin as of July 1, 2009. We think it is inappropriate and unfair to address Wisconsin's budget concerns by taking money from mutual fund investors, which is the ultimate result of the increase. Aside from the exorbitant amount of the fee increase, the inappropriateness and unfairness is exacerbated by the fact that (1) mutual fund investors already pay *far in excess of the Division of Securities entire budget* to the State of Wisconsin and (2) as a result of the National Securities Markets Improvement Act of 1996 (NSMIA), the State has no substantive jurisdiction over mutual funds. In other words, in return for the millions of dollars the industry pays to the State, which will now be increased by millions more, there is no benefit that flows to mutual fund investors from these fees. As such, they appear to amount to nothing more than a tax on mutual fund investors – and an expensive tax at that.

I understand that the Budget Summary prepared on this proposed increase noted: (1) only three mutual funds were based in Wisconsin, so the fee would largely be paid by mutual funds located outside the State and (2) the fee has not been increased since 1983.³ In response to the first point I

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$10.5 trillion and serve over 93 million shareholders.

² While all notice filing fees charged to mutual funds were increased by at least 100%, the maximum sales fee was increased from \$1500 to \$15,000 – *the highest stated maximum sales fee charged by any state.*

³ See "Mutual Fund Fees (Financial Institutions)," Joint Committee on Finance, Paper #346 [LBF 2009-11 Budget Summary: Page 249, #5 (part)], dated April 16, 2009.

would note that the location of the mutual fund issuer should largely be irrelevant to a consideration of increasing the fees. The fact is that *any* mutual fund that is sold in Wisconsin is presumably purchased by a Wisconsin resident. As a result, the expenses of that fund are increased, which reduces the return of every investor in that fund – regardless of where the fund is located. As such, *every Wisconsin investor that owns mutual funds will be paying these increased fees without regard to whether the fund company is located within or outside of Wisconsin.* As such, the harm to Wisconsin’s investors is the same regardless of where the mutual fund company is located. Moreover, because of the manner in which mutual funds are organized and operated, while it may be the mutual fund that writes the check for these fees, they are, in fact, paid by the investors in the fund because they are deducted out of the fund’s assets as a fund expense. Every increase in a fund’s expenses reduces the fund’s return to investors.

With respect to the second point, I respectfully submit that it is wholly irrelevant when these fees were last increased in light of both the amount mutual funds contribute to the State’s economy and the State’s limited regulatory authority over mutual funds. The monies paid to the State by mutual fund are “fees.” As such, unlike a tax, they are intended to subsidize or compensate the government for a service provided in return for such fees. By contrast, a tax is levied for the support of the government in general. In light of the fact that the monies paid by the mutual fund industry *far exceed* the entire budget of the Division of Securities – which is charged with regulating broker-dealers, investment advisers, and issuers of securities – it can hardly be said that the notice filing “fees” resemble a fee more than a tax. The fact that the “fee” may not have changes in over 25 years should not be relevant to a determination of the reasonableness of the “fee” charged if it can be demonstrated that the existing fee more than compensates Wisconsin for any services provided in return for such fee.

As regard those services provided in return for the fee, pursuant to NSMIA, since 1996, Federal law has preempted Wisconsin, and each of its sister states, from regulating the mutual fund industry. Instead, pursuant to Federal law, the state’s role over mutual funds is limited to the ministerial processing of mutual fund notice filings (which the State lacks authority under Federal law to substantively review) and bringing enforcement actions with respect to fraud and deceit. With respect to the first of these duties, the fees paid by mutual funds more than compensate the ministerial filings the State receives from mutual funds. With respect to the second duty, in the thirteen years since NSMIA was enacted, the State has not brought, nor needed to bring, a single enforcement action against a mutual fund company. In other words, the millions of dollars mutual funds pay to Wisconsin annually are not necessary to investigate or redress mutual fund activities.

We believe each of these issues points out just how unfair and inappropriate it is for the State of Wisconsin to address its budget concerns on the back of mutual fund investors who are already paying more than their fair share to support the general government obligations of the State. It is likely that, as a result of these exorbitant fees, certain mutual funds will determine that the costs of providing their shares to Wisconsin’s residents far exceeds any benefit to the fund and, as a result, they may elect to cease offering their shares in Wisconsin, to the detriment of Wisconsin’s residents. Accordingly, the substantial fee increase, in addition to taking money out of the pockets of mutual fund investors, may result in reducing the number of investment opportunities available to them.

For all of the above reasons, the Institute opposes these increases and respectfully, but strongly, recommends that you reverse them as soon as practicable. The Institute appreciates the opportunity to share these concerns with you on behalf of mutual fund investors. If you have any questions concerning these views, please do not hesitate to contact me by phone (202-326-5825) or email (tamara@ici.org).

Sincerely,

/s/ Tamara K. Salmon

Tamara K. Salmon
Senior Associate Counsel

Cc: Senator Kathleen Vinehout, CoChair
Representative Peter W. Barca, Co-Chair
Representative Andy Jorgensen, Vice Chair
Joint Committee on Audit



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August 17, 2009

Mr. Derrick M. Mitchell, Member
Texas State Securities Board
711 Louisiana Street
Houston, Texas 77002-2770

Re: Opposition to Application Fee Increase

Dear Mr. Mitchell:

The Investment Company Institute¹ is writing to you on behalf of Texas mutual fund shareholders to express our strong opposition to the recent application fee² increase imposed by the Board. In particular, effective September 1, 2009, the Board will increase the application fee imposed on issuers of securities, including issuers of mutual fund securities, by 150%, from \$40 to \$100. While we recognize the Board's legal authority to impose this increase pursuant to Article 581-35(A)(2) of the Texas Securities Act (the "Act"), we believe the increase is wholly contrary to the Board's primary mission, which, according to the Board's website, "is to protect Texas investors." We respectfully submit, for the reasons discussed below, that this increase will not protect investors and, in fact, will adversely affect the interests of Texas' mutual fund shareholders.

The Institute supports the efforts of the states to protect investors. We also support ensuring that state agencies charged with this responsibility have sufficient resources to fulfill their responsibilities. We strongly oppose, however, under the guise of protecting investors, states utilizing their securities acts to extract revenues for uses wholly unrelated to protecting investors. Among all the states that assess mutual fund notice filing fees, Texas appears to be the poster child for extracting exorbitant fees from mutual funds to support activities that have nothing to do with the purpose for which such fees are assessed. According to the Board's website,

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² While the fee is labeled an "application fee," this term seems to indicate that the persons that pay it are applying for some privilege or authority that requires a response from the Agency. As discussed below, under Federal law, the Agency lacks any legal authority to substantively review the filings submitted by mutual funds. Instead, the forms filed by mutual funds are merely a convenience to the states to enable them to assess fees.

As in every year since its creation, the State Securities Board remains a net contributor to the General Revenue Fund of the state. In FY 2007 the Agency was appropriated approximately \$5.6 million and deposited more than \$169 million in revenues, primarily from fees for the registration of securities and the firms and individuals who sell securities or provide investment advice.

The website further notes that the Agency's budget "is still one of the smaller budgets among Texas agencies."

Notwithstanding the fact that the Board currently raises about \$163 million in revenues in excess of the Agency's entire budget, the Board, for some unexplained reason, has decided that it is necessary to further exacerbate the disconnect between the Agency's budget and the fees raised under the Act by increasing the application fee for issuers of securities. We find the action by the Board to be irreconcilable with its mission to protect investors, particularly when the Board is undoubtedly aware that the additional revenues generated by this increase will play no role in fulfilling its stated mission.

With respect to Texas' mutual fund investors, the Board's disservice to investors is exacerbated by the fact that (1) such investors already pay in excess of \$54 million (of the \$169 million) under the Act to enable mutual funds to sell their shares to such investors in Texas (*i.e.*, approximately \$48 million more than the Agency's entire budget) and (2) as a result of the National Securities Markets Improvement Act of 1996 (NSMIA), the Agency has no substantive jurisdiction to regulate mutual funds. In other words, in return for the millions of dollars Texas' mutual fund investors pay to the State, which will be increased as of September 1st, there will be *no* benefit to these investors from this fee increase.

Contributing to the injustice of the exorbitant fees paid by mutual fund investors to Texas is the fact that, since 1996, Federal law NSMIA has preempted Texas and each of its sister states from regulating the mutual fund industry. Instead, pursuant to Federal law, the state's role over mutual funds is limited to the ministerial processing of mutual fund notice filings (which the State lacks authority under Federal law to substantively review) and bringing enforcement actions with respect to fraud and deceit. With respect to the first of these duties, the fees paid by Texas' mutual fund shareholders more than compensate for processing the ministerial filings the Agency receives from mutual funds. With respect to the second duty, to the extent Texas were to conduct an investigation or bring an enforcement action, such activities would be amply supported by the millions of dollars annually appropriated to the Agency. As such, the additional \$48 million collected from mutual funds is not necessary to ensure the support of such activity.

Unlike the fees charged under the Act to other issuers of securities, the fees charged to mutual fund issuers under the Act come out of the assets available to mutual funds shareholders. Indeed, because of the manner in which mutual funds are organized and operated, while it may be the mutual fund that writes the check for these fees, they are, in fact, paid by the investors in the fund because they are deducted out of the fund's assets as a fund expense. Every increase in a fund's expenses reduces the fund's return to investors. As a result of Texas' fees, every year, approximately \$48 million dollars is taken out of the pocket of Texas' mutual fund shareholders. As such, we fail to understand how the

Board is protecting these investors by both continuing to take such exorbitant sums out of their pockets and increasing the amount of the taking.

We believe each of these issues points out just how unfair and inappropriate it is for the Board to increase the fees paid by Texas' mutual fund investors by increasing the application fee 150%. They also clearly demonstrate that nothing about this fee increase bears any rational relation to the Board's mission to protect shareholders. For all of the above reasons, the Institute opposes this recent increase and respectfully, but strongly, recommends that the Board reverse this increase as applied to mutual fund investors as soon as practicable. The Institute appreciates the opportunity to share these concerns with you on behalf of Texas' mutual fund shareholders. If you have any questions concerning these views, please do not hesitate to contact me by phone (202-326-5825) or email (tamara@ici.org).

Sincerely,

/s/ Tamara K. Salmon

Tamara K. Salmon
Senior Associate Counsel

cc. Denise Voigt Crawford, Texas Securities Commissioner
David Weaver, General Counsel