

MEMO# 30897

October 4, 2017

ICI Joins IAA in Letter to Nevada on Fiduciary Duty Rules

[30897]

October 4, 2017 TO: ICI Members
Investment Company Directors
Bank, Trust and Retirement Advisory Committee
Broker/Dealer Advisory Committee
Operations Committee
Pension Committee
Pension Operations Advisory Committee
SEC Rules Committee
Transfer Agent Advisory Committee SUBJECTS: Investment Advisers
Operations
Pension RE: ICI Joins IAA in Letter to Nevada on Fiduciary Duty Rules

As we previously informed you, earlier this year Nevada revised its Financial Planners Act, which expressly imposes a fiduciary duty on financial planners.[\[1\]](#) While the law previously excluded broker-dealers and investment advisers from the fiduciary duty applicable to financial planners, these exemptions were eliminated this year. As a result, the Act now imposes a fiduciary duty on broker-dealers and investment advisers. The changes to the law also authorized Nevada's Securities Division to adopt rules under the state's securities act relating to this new fiduciary duty applicable to broker-dealers and investment advisers.

To assist it in its rulemaking, the Securities Division requested public comment regarding the rules it should adopt on this issue. In response to this request, the Institute and the Investment Adviser Association filed the attached comment letter with the Division. The letter reminds the Division of the preemptive provisions in Section 203A of the Investment Advisers Act of 1940 as amended by the National Securities Markets Improvement Act of 1996.[\[2\]](#) As discussed in the letter, Section 203A vests in the SEC exclusive authority to regulate the conduct of Federally-registered investment advisers. As such, Federal law has preempted the authority of Nevada – or any state – to impose any duty or obligation on a Federally-registered adviser. The letter recommends that any regulations promulgated by the Division under the new law expressly exclude SEC-registered advisers from this new requirement.

Tamara K. Salmon
Associate General Counsel

[Attachment](#)

endnotes

[1] See Institute [Memorandum No. 30834](#) (August 14, 2017), which discusses the fiduciary duty imposed by the Act. The Institute's memo also discusses how Federal law preempts state regulation of SEC-registered advisers.

[2] The Institute's memo cited above also discusses Section 203A and its impact on state law.

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