

MEMO# 5527

January 27, 1994

LEGISLATION INTRODUCED IN MISSOURI TO AMEND INVESTMENT ADVISER REGULATION

January 27, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 7-94 MISSOURI INVESTMENT ADVISER ASSOCIATE MEMBERS RE: LEGISLATION INTRODUCED IN MISSOURI TO AMEND INVESTMENT ADVISER REGULATION

_____ Legislation has been introduced in Missouri to amend certain provisions of the Missouri Uniform Securities Act (the "Act") relating to investment advisers. This bill is substantially similar to bills considered by the Missouri legislature during each of the past two years. (See Memoranda to Investment Advisers Committee Nos. 9-92 and 5-93 and Missouri Investment Adviser Associate Members, dated February 24, 1992 and March 11, 1993, respectively.) A copy of this year's bill is attached. Summarized below are several significant changes proposed to the Act in the legislation.

Investment Adviser Representatives Investment adviser representatives would be required to register under the Act. The initial and renewal registration fees for IA representatives is proposed to be \$50. (The renewal fee for investment advisers will be increased from \$100 to \$200, which is currently the initial registration fee.) Added to this year's legislation is a provision that authorizes the Missouri Commissioner of Securities (the "Commissioner") to prescribe by rule continuing education requirements for investment advisers and investment adviser representatives.

Fraudulent Activities The legislation will expand the list of activities in which it is unlawful for an investment adviser to engage to include: (1) engaging in principal or agency cross-transactions without providing specified written disclosure to the client and obtaining the consent of the client to the transaction; (2) holding itself out as a "financial planner", "financial adviser", "financial consultant" or similar term unless such person falls within one of the categories specified in the provision; and (3) engaging in any dishonest or unethical practice as the Commissioner may define by rule.

Minimum Financial Requirements; Surety Bond The Commissioner would be authorized to establish minimum financial requirements for investment advisers, which could vary depending upon whether an adviser has custody or discretionary authority over client funds or securities. The Commissioner's existing authority to require investment advisers to post a surety bond would be limited to those advisers who have custody or discretionary authority over client funds or securities.

Disclosure The bill would authorize the Commissioner to require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of clients.

Private Right of Action A private right of action similar to the one included in the NASAA Model Amendments to the Uniform Securities Act would be included in the Act for fraudulent activities and for violations of certain provisions of the Act relating to investment advisers (including provisions dealing with prohibited activities, registration requirements, unlawful

representations concerning registration or exemption and filing of sales and advertising literature). A statute of limitations of five years has been added to the private right of action in this year's bill. * * * * * A copy of the Missouri legislation is attached. If you have any comments on the legislation, please call the undersigned at 202/326-5825. Tamara K. Cain Assistant Counsel

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