

MEMO# 5614

February 24, 1994

DRAFT ILLINOIS LEGISLATION RELATING TO REGULATION OF INVESTMENT ADVISERS

February 24, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 15-94 ILLINOIS
INVESTMENT ADVISER ASSOCIATE MEMBERS RE: DRAFT ILLINOIS LEGISLATION RELATING
TO REGULATION OF INVESTMENT ADVISERS

The Illinois Secretary of State (the "Secretary") has announced plans to have legislation introduced in the near future to amend the Illinois Securities Law of 1953 (the "Securities Law"). The legislation would amend various provisions in the Securities Law relating to the regulation of investment advisers. The relevant sections of the draft legislation are attached. Among other things, the legislation would (1) require registration of investment adviser representatives; (2) authorize the Secretary to require continuing education of any registrant; and (3) require investment adviser applicants to furnish clients with information in the form prescribed by the Secretary by rule, "including without limitation, the fees paid directly or indirectly, any disciplinary history of the investment adviser, its officers or directors for the immediate past 10 years and the toll free number of the Secretary of state." Other significant provisions in the Secretary's proposed legislation would: -- amend the definitional section of the Securities Law to delete the exclusion for banks, trust companies, lawyers, accountants, engineers, geologists, and teachers from the definition of "investment adviser", and add definitions for "registered investment adviser representative" and "investment adviser solicitor" (pp. 103 - 106); -- require an investment adviser applicant to include a list of solicitors with its application (p. 196); -- define what constitutes unethical business practices for an investment adviser or its representatives. These practices, which include recommending unsuitable advice; exercising unauthorized discretion; engaging in excessive trading; borrowing money from a client; misrepresenting qualifications, services, or fees; and charging unreasonable fees, are consistent with the NASAA Model Amendments to the Uniform Securities Act (pp. 200-202); -- authorize the Secretary to require investment advisers to obtain a surety bond except those persons who maintain net capital in excess of that required by the Secretary by rule (pp. 202-203); -- authorize the Secretary to "inspect and observe, without limitation, the entire premises on any area or location of the principal or branch office" and conduct interviews of any person affiliated with the adviser (pp. 210 - 211); -- require an adviser to maintain records in the principal and each branch office of the adviser (p. 210); -- create private and other civil remedies for clients of investment advisers; preclude an action by a client if the client had been offered rescission equal to the full amount of consideration plus interest; and provide a three year statute of limitations (pp. 246-249); and -- require that any arbitration clause in a contract or agreement

ent to purcha s e invest m e n t advice o r servic es be printe d in boldfa ce, 10 point t y p e (p . 249). * * * * * Please provide me with any comments you have on the proposed legislation by Friday March 11, 1994. My direct number is 202/326-5825. We will keep you advised of developments. Tamara K. Cain Assistant Counsel Attachment

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