The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 2573

March 1, 1991

INSTITUTE COMMENTS ON NEW MEXICO REVISED PROPOSED RULES

March 1, 1991 TO: STATE LIAISON COMMITTEE NO. 5-91 CONTRACTUAL PLANS COMMITTEE NO. 2-91 RE: INSTITUTE COMMENTS ON NEW MEXICO REVISED PROPOSED RULES _____ As we previously informed you, for the past several months the New Mexico Securities Division has undertaken the task of revising its administrative rules to "clarify existing policy and to address changing market conditions." The original version of the proposed rules was issued last fall and the Institute submitted an extensive comment letter on the proposed rules. The Division has since issued revised proposed rules which incorporated some, but not all, of the Institute's original recommendations. (See Memoranda to State Liaison Committee No. 27-90, dated November 8, 1990 and Contractual Plan Committee Nos. 12-90, dated October 26, 1990 and 1-91, dated January 24, 1991.) In its comment letter on the revised proposed rules, the Institute objected to the provisions affecting contractual plans and once again sought clarification of the definition of "sales charge or load" as follows. Provisions Affecting Contractual Plans The revised proposed rules state that a contractual plan cannot register its securities, or claim the blue chip exemption unless certain requirements are met. The Institute disagreed with the proposal to require each plan investor to read and execute a "load disclosure document" in that such disclosure is already required to be prominently disclosed in each contractual plan's prospectus and in other forms required to be delivered to shareholders. The Institute further objected to the proposed requirement that all proceeds of the contractual plan investment be placed in portfolios dedicated exclusively to contractual investors and that the investment objective of the portfolios be long term capital growth. The letter states that "these requirements would transform what might be a reasonable investment strategy into a regulatory straightjacket which would deprive contractual plan investors of the right to make choices that are available to all other mutual fund investors." We also question the Division's purpose in restricting the investment objective of a contractual plan and note that while long term capital growth in many cases is a suitable investment objective, it is not the only suitable investment objective for a long term investor. The letter further states that the provision requiring a refund of all sales loads in excess of 15% of payments is unnecessary for the protection of investors and would disrupt the careful balancing of interests provided in Section 27 of the Investment Company Act of 1940. Limitation on Sales Charges or Loads The Institute once again requested the Division to clarify the definition of "sales load or charge" so that asset-based sales charges under Rule 12b-1 of the 1940 Act are specficially excluded. As written, 12b-1 fees could be within the proposed rules' definition of "sales load or charge" or construed as "compensation to distributors, brokers, dealers and agents". Since it would be impracticable for funds to comply with the proposed rules' definition of "sales load or charges", we urged the Division to clarify this point. * * * A copy of the Institute's comment letter is attached.

We will keep you advised of further developments. Patricia Louie Assistant General Counsel Attachment (without enclosures)
