

MEMO# 1159

May 15, 1989

NORTH CAROLINA PROPOSED LEGISLATION ESTABLISHING INVESTOR SECURITY FUND

May 15, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 21-89 NORTH CAROLINA
MEMBERS NORTH CAROLINA ASSOCIATE MEMBERS RE: NORTH CAROLINA PROPOSED
LEGISLATION ESTABLISHING INVESTOR SECURITY FUND

_____ The purpose of this memorandum is to inform you that the North Carolina legislature is considering a bill that would establish an Investor Security Fund, financed by an assessment of broker-dealer and investment adviser registrants. A copy of House Bill 719 (companion bill is Senate Bill 520) is attached for your review. House Bill 719 would provide for several amendments to the North Carolina Securities Act. These include: (1) a prohibition on the use of unlawful boiler room operations; (2) a prohibition on the manipulation of any security; (3) the administrator, in his discretion, may appoint securities law enforcement agents and other enforcement personnel to carry out the investigatory and enforcement actions of the administrator; (4) the establishment of an Investor Security Fund, funded by assessments of securities dealers and salesmen and investment advisers and investment adviser representatives (\$50 for entities and \$10 for individuals) and from which the administrator, in his discretion, can pay "reimbursable losses" to a claimant; (5) civil liabilities for broker-dealers and investment advisers with a statute of limitations of five years and damage awards of an amount up to three times the consideration paid for a security, etc.; and (6) civil and criminal monetary penalties and fines paid, as a result of violations, would go into an Anti-Fraud Trust Fund; funds deposited in such fund would be used for investigation and prosecution of civil and criminal actions arising under the Securities Act. In short, this bill would create two funds; an Investor Protection Fund, funded by broker-dealers and investment advisers, and an Anti-Fraud Trust Fund, funded by penalties and fines paid by broker-dealer and investment adviser wrong-doers. The Institute is extremely concerned about this legislation, including the possible precedential effects establishment of an Investor Protection Fund might have on other states. Therefore, we would like to have a meeting of interested members to discuss alternative approaches the Institute might take on this legislation. First, we would like to discuss arguments that could be made in opposition to enactment of the legislation. Second, we would like to discuss possible ways to restructure the Investor Protection Fund to make it more palatable. There will be a meeting on Thursday, May 25, 1989 at 10:00 a.m. at the Institute's offices to discuss approaches to this legislation. Please contact my secretary, Laura Thayer, by Monday, May 22, 1989 to let her know whether or not you will be able to attend the meeting. Robert L. Bunn, Jr. Assistant General Counsel Attachment

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