

MEMO# 1197

June 7, 1989

MARYLAND PASSES INVESTMENT ADVISER LAW

June 7, 1989 TO: INVESTMENT ADVISER MEMBERS NO. 30-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 30-89 RE: MARYLAND PASSES INVESTMENT ADVISER LAW

On May 25, 1989, Maryland Governor William Donald Schaefer signed Maryland House Bill No. 712 into law. This law, affecting both investment advisers and investment adviser representatives, becomes effective July 1, 1989. A copy of the law is attached. This new law contains both disclosure and registration provisions. The disclosure provisions go into effect on July 1, 1989. The registration requirements in Maryland go into effect on July 1, 1990. In Section 11-101, an investment adviser is defined as one which generally gives investment advice about securities as part of a regular business or which holds itself out as an investment adviser in any way. The definition of investment adviser representative, amended as the result of substantial comments made by the Institute and Institute members, includes individuals who manage accounts or portfolios of clients, solicit, offer or negotiate for the sale of or sell investment advisory services, etc. Section 11-302 makes it unlawful for an investment adviser to engage in any fraud or deceit and investment advisers are prohibited from engaging in dishonest or unethical practices as the Maryland Securities Commissioner may define by rule. Section 11-401 contains registration requirements for investment advisers and investment adviser representatives. Registration exemptions are available for (i) advisers whose only clients are investment companies or insurance companies, (ii) advisers which have only institutional clients, (iii) advisers with no more than five clients in Maryland during any twelve month period, and (iv) an adviser which is not an investment adviser as defined in the law, does not accept commissions, does not maintain custody of client funds, and which is already subject to regulation by a Maryland agency or board that has disciplinary authority relating to financial counseling and advice. In Section 11-409, the Securities Commissioner may by rule or order establish minimum financial requirements for investment advisers. These requirements may be higher for advisers with custody of client funds or securities. Section 11-410 states that the Securities Commissioner may by rule or order require an adviser which has custody of client funds to post a surety bond in amounts up to \$10,000. Also, advisers are required to disclose to clients and prospective clients certain information required by the Securities Commissioner. This information is typically satisfied by meeting the similar disclosure requirements under Section 204-3 of the Investment Advisers Act of 1940. These disclosure requirements must be complied with by July 1, 1989. In this section, investment advisers are also required to file financial reports which the Commissioner prescribes. In Section 11-703, advisers and investment adviser representatives are subject to civil liability provisions for fraudulent activity by advisers or representatives. The statute of limitations for civil liability is three years after the contract of sale or the rendering of investment advice or the expiration of two years after the

discovery of the facts constituting the violation, whichever first occurs. We will keep you informed of any developments. Robert L. Bunnan, Jr. Assistant General Counsel Attachment

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