

MEMO# 5967

June 16, 1994

MASSACHUSETTS PROPOSES INVESTMENT ADVISER REGULATIONS

June 16, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 38-94 MASSACHUSETTS INVESTMENT ADVISER ASSOCIATE MEMBERS RE: MASSACHUSETTS PROPOSES INVESTMENT ADVISER REGULATIONS _____ The Massachusetts Securities Division (the "Division") has issued for comment proposed regulations to implement provisions of recently enacted legislation providing for the registration and regulation of investment advisers. (See Memorandum to Investment Adviser Associate Members No. 5-94 and to Investment Adviser Members No. 5-94, dated January 21, 1994.) The emergency regulations previously adopted by the Division will remain in effect until such time as these proposed regulations are adopted. (See Memorandum to Investment Adviser Associate Members No. 11-94 and Investment Adviser Members No. 10-94, dated March 4, 1994.) A copy of the proposed regulations, significant aspects of which are summarized below, is attached.

1. Registration Provisions The proposed regulations include the procedures for initial and renewal registration of investment advisers and investment adviser representatives, as well as for termination of their registration.

2. Examination Requirement Unless exempt, each investment adviser representative would be required by the proposed regulations to score at least 70% on the Series 65 examination and either: (1) successfully complete a nationally recognized examination or course of study specifically designed in part or whole for investment advisers or financial planners (e.g., the Chartered Financial Analyst ("CFA") exam); (2) successfully complete an academic program at an accredited institution of higher education leading to a degree or certificate in financial planning or involving significant financial and investment analysis; or (3) pass the Series 2 or 7 examinations administered by the NASD. Exempt from this requirement are those representatives that have been (1) registered with the Division since July 1, 1994 and (2) continuously registered under or associated with an investment adviser registered under the Investment Advisers Act of 1940 since January 1, 1990, so long as such person remains registered under such Act. The Director of the Division may waive the examination requirement for certain persons including solicitors and representatives with no clients in the Commonwealth.

3. Financial Requirements As proposed, investment advisers that have custody of client funds or securities or that accept prepayment of advisory fees must either post a bond or maintain liquid net worth of at least \$25,000. Advisers with discretionary authority over customer funds must either post a bond of \$25,000 or maintain liquid net worth of \$10,000.

4. Disclosure Requirements In addition to compliance with the federal "brochure" rule (i.e., Rule 204-3 under the Investment Advisers Act), prior to the client entering into an advisory contract, the adviser must provide the client notice that the disciplinary history of the adviser and its representatives can be obtained from the Division. Also, unless exempt from such requirement, an adviser must provide the client with detailed commission or fee information before each purchase

or sale of a security for which the adviser has rendered advice. An adviser is exempt from this requirement with respect to advice that either (1) is rendered pursuant to a contract giving discretionary authority to the adviser or (2) pertains to a security traded on a national exchange if (a) the commission, mark- up, or mark-down on the transaction is within NASD guidelines and (b) the transaction is effected through a broker-dealer that has no affiliation with the investment adviser or investment adviser representative. 5. Other Provisions Other provisions in the proposed regulations would: define the post-registration filing and record keeping requirements; require an adviser to establish written supervisory procedures; and define those practices that shall be deemed fraudulent, dishonest, or unethical. * * * * * Written comments on these proposed regulations are due no later than July 15, 1994. Please provide me no later than Friday July 1, 1994 with any comments you would like to have included in the Institute's letter. Comments may be submitted to me by phone (202/326-5825) or by fax (202/326-5828). Tamara K. Cain Assistant Counsel
Attachment

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