

MEMO# 969

February 9, 1989

INSTITUTE COMMENTS ON PROPOSED NEW JERSEY PERFORMANCE FEE RULE

February 9, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 10-89 RE: INSTITUTE
COMMENTS ON PROPOSED NEW JERSEY PERFORMANCE FEE RULE

On February 1, 1989, the Institute submitted a comment letter to the New Jersey Securities Commissioner concerning a proposed performance fee rule. A copy of both the proposed rule and our letter are attached. In our letter, we generally agreed with the concept of permitting performance-based compensation agreements between investment advisers and their clients. However, we noted that the SEC and a number of other states have already adopted rules in this area. We recommended that New Jersey's proposed rule be coordinated and consistent with those rules and recommended changes to affect that goal. Specifically, we recommended that the New Jersey proposal permit performance fee arrangements with clients who have either \$500,000 or more to place with an investment adviser or a net worth of \$1 million. New Jersey's proposed rule would require that an investment adviser client have both \$500,000 to place with an investment adviser and a net worth of \$1 million. In our second comment, we recommended the deletion of a requirement that would exclude certain personal items from the net worth test for an individual. We stated that such a requirement was inconsistent with other state rules and with the SEC rule. At a minimum, we urged the Securities Commissioner to delete the provision that would exclude a farm from an individual's net worth. We stated that we could not understand why a wealthy farmer would be considered to be necessarily less sophisticated than a wealthy industrialist. Finally, we commented that we did not believe that an individual who, as an independent agent of a client, assists a client in negotiating a performance fee arrangement should be required to register as an investment adviser simply because of that assistance. Therefore, we recommended that the Securities Commissioner delete the provision found in subrule (D). We will continue to keep you advised of developments in New Jersey. Robert L. Bunnan, Jr.
Assistant General Counsel Attachment