

**MEMO# 7299**

September 28, 1995

# **INSTITUTE COMMENTS ON INVESTMENT ADVISER RULES PROPOSED BY THE ARIZONA SECURITIES DIVISION**

1 See, Memorandum to Investment Advisers Committee No. 35-95 and Arizona Associate Members, dated September 1, 1995. September 28, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 40-95 ARIZONA ASSOCIATE MEMBERS RE: INSTITUTE COMMENTS ON INVESTMENT ADVISER RULES PROPOSED BY THE ARIZONA SECURITIES DIVISION

As we previously advised you, the Arizona Securities Division recently issued for comment proposed rules to implement provisions added to the Arizona Securities Act in 1994 providing for the regulation of investment advisers.<sup>1</sup> The Institute has filed the attached comment letter with the Division. Because the rules, in large part, are consistent with the NASAA Model Amendments to the Uniform Securities Act or with the Investment Advisers Act of 1940 and the rules thereunder, the Institutes comment letter focuses primarily on those provisions in the proposal that remain inconsistent. Our comments on these inconsistent provisions are summarized below. Rule 6-203, Dishonest and Unethical Practices The Institutes letter recommends that the Division delete certain requirements from the list of dishonest or unethical practices set forth in the proposed rules including: (1) disclosure of "undisclosed, conflicting securities positions", because such provision seems unnecessary and is vague and ambiguous; (2) written contracts for impersonal advisory services, because such contracts are not required under federal law or under the NASAA Model Amendments; (3) delivery of annual and quarterly itemized account statements to clients by advisers with discretionary authority; (4) delivery of annual itemized statements to clients by advisers that charge clients on other than an hourly or fixed fee basis; and (5) requiring advisers with any disciplinary history to provide written disclosure to prospective clients of such history. With respect to this last item, the Institute notes that the disclosure required by this Rule is unnecessary because, under current law, clients are provided disclosure of any disciplinary event that would be material to an evaluation of the advisers integrity or ability to meet contractual commitments. The Institutes letter also notes that the proposed Rule would require disclosure without regard to the timeliness or relevance of the information. We also note that no other state has a similar requirement. Rule 6-205, The "Brochure Rule" The Institutes letter also recommends that the Division not adopt the provision in this proposed Rule that would require advisers to provide clients with written disclosure about the availability of Part I of Form ADV and the nature of the information provided therein. In addition to opposing adoption of these provisions, the Institutes letter commends the Division for revising the earlier draft of the proposed rules to ensure greater uniformity and consistency between the Divisions proposal, federal law, and the NASAA Model Amendments. Tamara K. Cain Assistant Counsel Attachment

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