

**MEMO# 5610**

February 24, 1994

## **MAJOR OVERHAUL OF ILLINOIS SECURITIES ACT PROPOSED**

February 24, 1994 TO: SEC RULES COMMITTEE NO. 20-94 STATE LIAISON COMMITTEE NO. 17-94 UNIT INVESTMENT TRUST COMMITTEE NO. 15-94 ILLINOIS MEMBERS RE: MAJOR OVERHAUL OF ILLINOIS SECURITIES ACT PROPOSED

The Illinois Secretary of State ("the Secretary") has announced plans to have a major legislative package introduced in the near future that would create four new Acts -- the Business Opportunity Sales Law (Article 5), the Business Brokers Law (Article 10), the Loan Brokers Law (Article 15), and the Uniform Take-over Law (Article 20). The legislation would also amend and rename the Illinois Securities Law of 1953 ("the Securities Law") as the Securities Reform and Investor Protection Act. The proposed amendments to Securities Law are briefly summarized below.

1. New Disclosure Requirements (Section 7b, pp. 178-179) The legislation would require every investment company to deliver its prospectus and statement of additional information to each person prior to or at the time of sale of the fund's shares. In addition, the legislation would require the delivery of a supplemental statement along with each prospectus. This supplemental statement "shall set forth a summary of material facts about the securities and issuer contained in the prospectus in clear, concise, and comprehensible language." The form and content of the supplemental statement shall be defined by the Secretary by rule, regulation, or order.
2. Registration of Investment Company Shares (Section 7, pp. 165-178) The provisions in the legislation that relate to the registration of investment company shares include a requirement that to be registered by coordination, a federal registration statement must be filed under the Securities Act of 1933 within 30 days of filing the offering with the Secretary. Otherwise, the shares must be registered by qualification. The legislation deletes the requirement that a consent to service of process be filed with an application. The legislation also deletes other provisions in the Securities Law but replaces them with language that would permit the Secretary to address the area by rule. These include provisions relating to filing amendments, the period of effective registration, renewing registrations, and the fees charged to retroactively register oversold shares.
3. Bank Issues (Section 2.7, p. 103; Section 2.11 pp. 103-105; and Section 9.1, pp. 218-219) The proposed legislation would amend the definitions of "dealer" and "investment adviser" to delete the current exclusion for banks and trust companies. Also, the proposed legislation would require financial institutions issuing securities to: (1) disclose in every advertisement whether the certificate of deposit or security is insured, the identity of the insurer, and whether the security is backed by the full faith and credit of any government; and (2) notify a purchaser in writing of the lack of insurance on any security it issues.
4. Investor Bill of Rights (Section 8.1, pp. 212-217) The proposed legislation would require every registered dealer to annually provide each Illinois client with a disclosure document that includes certain specified disclosures. Along with its annual financial statement, a

dealer must file a certification with the Secretary that the required disclosures have been made. 5. Telemarketing Provisions (Section 2.30, p. 107 and Section 9.2, pp. 219-220) The proposed legislation would create a new statutory section providing for the regulation of telephone solicitations relating to the offer or sale of securities. The legislation would define "telephone solicitor" and provide for the regulation of unsolicited telephone call. In particular, the legislation specifies the hours during which such calls could be made and requires the solicitor, upon making contact, to immediately identify itself by name as well as the name of the dealer, investment adviser, or other person on whose behalf the solicitor is calling. These provisions would not apply to any solicitor with a pre-existing business relationship with the person called "if the solicitor is operating under the same exact business name." 6. Enforcement Provisions (Section 11, pp. 221-238; Section 14, pp. 250-252; Sections 14.1-14.3, pp. 252-267) The proposed legislation includes various amendments to the regulatory and enforcement authority of the Secretary. These amendments include provisions that would authorize: (1) the issuance of orders of public censure, accounting, rescission, disgorgement, costs of investigation, or other necessary relief; and (2) the imposition of fines not to exceed \$25,000 per violation. Also, the penalty for violation of the Securities Law would be upgraded from a misdemeanor to a felony and courts would be permitted to order white collar crime forfeiture. \* \* \* \* \* A copy of the relevant pages from the bill is attached. If you would like to receive a copy of the entire bill, which is 275 pages, please contact my secretary, Karen Fernandes, at 202/326-5829. Please be aware that as of January 1, 1994, Illinois adopted very stringent lobbying provisions that require individuals contacting government officials on legislative matters to register as lobbyists. Failure to register may subject the individual/firm to a \$10,000 penalty. Accordingly, should you have any comments on the legislation, please contact the Institute and not the Securities Division unless you are registered in Illinois as a lobbyist. We will keep you advised of developments. Tamara K. Cain Assistant Counsel Attachment