

MEMO# 2295

October 26, 1990

COMMENTS ON NEW MEXICO PROPOSED RULES

October 26, 1990 TO: CONTRACTUAL PLANS COMMITTEE NO. 12-90 RE: COMMENTS ON NEW MEXICO PROPOSED RULES

The New Mexico Securities Division recently asked for comments regarding a comprehensive package of proposed rules, two of which would specifically impact contractual plans. Proposed Rule 5.133.C. would deny the use of the blue chip exemption to contractual plans "whereby more than a pro-rata portion of the load or commission is deducted from any installment." Likewise, proposed Rule 4.400.B. provides that "[a] registration will not be approved for the sale of ... a contractual plan whereby more than a pro-rata portion of the load or commission is deducted from any installment payment." (See Memorandum to Contractual Plan Committee No. 9-90, dated September 19, 1990.) The Institute submitted an extensive comment letter to the Securities Division that specifically focused on the scope of the Director's ability to promulgate rules that would deny the availability of the blue chip exemption from registration to contractual plans absent a violation of the New Mexico Securities Act. The Institute also questioned whether the Director had the authority to deny administratively a registration statement for a contractual plan without making an inquiry or finding that the operation of a contractual plan constitutes a "fraud" or "deceit" as required pursuant to the Act. In addition, the Institute noted due to the highly detailed regulation of contractual plans under the federal securities laws, that it would be extremely doubtful that the Director could properly find that the offering or selling of a contractual plan would rise to the level of a fraud or deceit. A copy of the Institute's comment letter is attached. We will keep you informed of developments. Patricia Louie Assistant General Counsel Attachment

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