

**MEMO# 4934**

June 29, 1993

## **NEW YORK INVESTMENT ADVISERS BILL**

June 29, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 19-93 NEW YORK ASSOCIATE MEMBERS RE: NEW YORK INVESTMENT ADVISERS BILL

The New York legislature is considering two bills that would amend the investment adviser provisions of the state's general business law. The first bill, AB 7954, would adopt certain provisions based on the Uniform Securities Act. These provisions would, among other things: - require that investment adviser representatives register; - delete the exemption from the definition of "investment adviser" for advisers with no more than 40 clients, and replace it with an exemption from the registration requirement for advisers who do not have a place of business in New York and, during the previous 12 months, did not direct business communications to more than five noninstitutional clients; - provide that the registration filing requirement could be satisfied by the filing of Form ADV or Form U-4; - require advisers with custody of client funds or securities to maintain minimum net capital of \$25,000, maintain minimum net worth of \$35,000, or post surety bonds of up to \$100,000, and require advisers with discretionary authority (but not custody) to maintain minimum net capital of \$5,000, maintain minimum net worth of \$10,000, or post surety bonds of up to \$100,000; - impose record keeping requirements, which could be fulfilled if an adviser complies with the record keeping requirements of the federal Investment Advisers Act; - require that clients be given Part II of Form ADV or a written document that contains at least the information required by Part II; - require advisers with custody of client funds or securities to file an audited balance sheet, and advisers with discretionary authority (but not custody) to file unaudited balance sheets; - create an express private right of action against advisers (and certain control persons and employees) for violation of the antifraud provisions. The second bill, AB 7955, would provide an express private right of action against advisers (and certain control persons and employees) who violate the registration requirements or who commit fraud in the offer or sale of a security. The legislature's session is expected to end sometime in July. Thomas M. Selman Assistant Counsel

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