

MEMO# 5628

March 1, 1994

ARIZONA LEGISLATION INTRODUCED TO IMPLEMENT UNIFORMITY PROCEDURES AND REGULATE INVESTMENT ADVISERS

March 1, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 17-94 STATE LIAISON COMMITTEE NO. 18-94 UNIT INVESTMENT TRUST COMMITTEE NO. 16-94 ARIZONA ASSOCIATE MEMBERS RE: ARIZONA LEGISLATION INTRODUCED TO IMPLEMENT UNIFORMITY PROCEDURES AND REGULATE INVESTMENT ADVISERS

Legislation was recently introduced in the Arizona Legislature to amend various provisions of the Arizona Securities Act ("the Act"). The proposed legislation, House Bill 2512, includes amendments to implement provisions from the NASAA Model Investment Company Registration and Reporting Procedures and authorize the registration and regulation of investment advisers and investment adviser representatives. These provisions are briefly summarized below. 1. "True" Indefinite Registration (Sections 44-3321 - 44-3324, pp. 24-28) House Bill 2512 would require mutual funds and unit trusts to register an indefinite amount of securities. A mutual fund would register an indefinite amount of securities by payment of the minimum fee of \$200 at the time of filing an application for registration or renewal. Thereafter, within two months of the fund's fiscal year end, the fund must either file a sales report and pay a fee of 1/10th of one percent of the aggregate dollar amount sold in Arizona during the registration period, less \$200, or pay a fee of \$3300. To renew the registration for the following year, the fund must file the appropriate renewal documents and pay an additional \$200 renewal fee. A unit investment trust would register an indefinite amount of securities by payment of the minimum fee of \$200 at the time of registration. Thereafter, within two months after the anniversary of the trust's effective date, the trust must either file a sales report and pay a fee of 1/10th of one percent of the aggregate dollar amount sold in Arizona during the registration period, less \$200, or pay a fee of \$3300. The registration of a unit investment trust would be effective for one year from the effective date of registration with the Securities and Exchange Commission. To renew the registration for an additional year, the trust must file the appropriate documents and pay an additional \$200 renewal fee. The legislation also increases the maximum registration fee for investment companies from \$2000 to \$3500. According to the staff of the Securities Division, this increase is necessary to ensure that the "true" indefinite registration will be revenue neutral to the Commission. The minimum fee remains the same (i.e., \$200, see attached Amendment to House Bill 2512). Currently, investment companies must register a definite amount of securities and pay a registration fee of 1/10th of one percent of the aggregate dollar amount of securities registered, with a minimum fee of \$200 and a maximum fee of \$2000. In the event of an oversale, shares may be retroactively registered by paying a fee equal to three times the difference between the initial registration fee paid and the

registration fee required. 2. Regulation of Investment Advisers and Investment Adviser Representatives (Sections 44-3151 - 44-3261, pp. 10-21) The Arizona legislation would amend the Act in a manner generally consistent with the NASAA Model Amendments to the Uniform Securities Act. For example, House Bill 2512 would: 1. require the registration of investment advisers and investment adviser representatives. The registration fee will be \$250 for an adviser and \$40 for each representative; 2. provide an exemption from the registration requirement for registered dealers and their salesmen and for persons who do not have a place of business in Arizona and who do not direct business communications to more than five clients; 3. permit the Commission to require by rule a surety bond of up to \$100,000 of any adviser with custody or control of any customer funds or securities; 4. require the annual filing of an audited balance sheet by any adviser that has custody of client funds or securities or requires prepayment of advisory fees. Advisers with discretionary authority who do not have custody or control of client funds or securities must annually file a balance sheet, which need not be audited; and 5. define fraudulent conduct. Unlike the NASAA Model Amendments, however, the legislation does not require disclosure (i.e., a brochure rule) beyond the general anti-fraud provision nor maintenance of books and records. * * * * * A copy of House Bill 2512 and an amendment passed thereto by the Arizona House of Representatives Committee on Commerce are attached. We will keep you advised of developments. Tamara K. Cain Assistant Counsel Attachments