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MASSACHUSETTS INVESTMENT ADVISERS BILL

June 18, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 14-93 RE: MASSACHUSETTS INVESTMENT ADVISERS BILL _____ The Massachusetts House of Representatives is considering the attached bill, which generally would adopt provisions to (1) require registration of investment advisers and investment adviser representatives, (2) authorize the Secretary to impose books and records, financial reporting, and disclosure and filing requirements on investment advisers, and (3) authorize administrative sanctions against investment advisers by the Secretary. The bill would include in the definition of "investment adviser" financial planners and other persons who "hold themselves out" as providing investment advisory services for compensation. Among those whom the bill would exempt are (1) persons whose only clients are certain institutions, including investment companies, (2) registered broker-dealers and broker-dealer agents, and (3) federally-registered investment advisers that are "qualified institutional buyers" or QIB affiliates under Securities and Exchange Commission Rule 144A. According to the Director of the Massachusetts Securities Division, this last exclusion is designed for those institutional money managers that also have retail clients. If an adviser invests on a discretionary basis at least $100 million for one QIB client, then the adviser would qualify as a QIB under Rule 144A and would be exempt under the bill, even if it also has retail clients. The bill does not contain a de minimis exception for advisers with only a few clients in Massachusetts. The bill would require disclosure of such matters as the compensation arrangements between the client and adviser and the adviser's "business practices." The bill also would require disclosure, before each transaction, of information about commissions and fees and third-party compensation arrangements. The transaction reports would have to be in writing only if the recommendation was in writing, and the Secretary could adopt a rule permitting clients to waive a disclosure. In a recent conversation with Institute staff, the Director clarified certain aspects of the bill. First, an adviser generally could not aggregate non-QIB accounts in order to meet the $100 million threshold for qualification as a QIB. Second, although the bill could be read to require dual registration of some persons as investment adviser representatives and investment advisers, the Division instead intends to establish a two-tier registration system unless an investment adviser representative has an advisory business on the side. Finally, although the bill does not explicitly call for the use of Form ADV to satisfy the disclosure requirements, the Division intends to require use of the Form ADV. (Any non-Form ADV disclosure requirement, such as the transaction reporting requirements, would have to be separately fulfilled.) The legislature's session ends in December. Thomas M. Selman Assistant Counsel Attachment