The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 7103

July 11, 1995

INSTITUTE COMMENTS ON PROPOSED AMENDMENTS TO NEW MEXICO RULES RELATING TO INVESTMENT ADVISERS

1 See Memorandum to Investment Advisers Committee No. 29-95 and New Mexico Associate Members, dated June 26, 1995. July 11, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 31-95 RE: INSTITUTE COMMENTS ON PROPOSED AMENDMENTS TO NEW MEXICO RULES RELATING TO INVESTMENT ADVISERS

_____ As we previously advised you, the New Mexico Securities Division has proposed amendments to rules under the New Mexico Securities Act that govern the registration and conduct of investment advisers.1 These proposed amendments include provisions that would (1) provide additional options for satisfying the examination requirements, (2) delete a provision that currently permits investment advisers to enter into performance fee agreements that are in compliance with Rule 205-3 under the Investment Advisers Act of 1940, and (3) permit single representative offices of investment advisers to operate without having a person registered as a principal physically present in such office provided the adviser complies with certain supervisory requirements. The Institute has submitted a comment letter on the DivisionGs proposal, which is summarized below. (1) Additional Options for Satisfying the Examination Requirements While the Institute strongly supports adoption of the amendments that would provide additional options for satisfying the examination requirements, we recommend that the Division reconsider the utility of requiring the designated supervisor of an investment adviser to pass the Series 24, General Securities Principal Examination. Our recommendation is based on the fact that such examination provides no indication to the Division of an applicantGs qualifications to render investment advice or familiarity with the Investment Advisers Act. (2) Performance Fees According to Division staff, the rule permitting performance fee arrangements is being deleted because of concerns that it is contrary to a provision in the New Mexico Securities Act that prohibits such arrangements and there is no statutory authority for the rule. The InstituteGs letter recommends that the Division give serious consideration to pursuing an amendment to the Act to permit performance fee arrangements that are in compliance with Rule 205-3 of the Investment Advisers Act. (3) Supervision of Single Representative Offices The Institute opposes adoption of the DivisionGs proposed provision that would require investment advisers to conduct a “statistically valid sampling” of the clients of all single-representatives offices to determine compliance with “all applicable laws and regulations” if the office operates without a designated principal on its premises. The Institute believes that such sampling will inevitably cast aspersions on the adviser in the mind of its clients and may, therefore, be detrimental to the relationship between the client and the adviser. Should the Division require such sampling, the Institute recommends that the proposed rule

be amended to (1) expressly provide the adviser the discretion to determine what constitutes a valid sampling and (2) limit the information elicited from the sampling of clients to that necessary to detect the adviserGs representative engaging in fraudulent or prohibited business practices as defined by the Act. A copy of the InstituteGs comment letter is attached. Tamara K. Cain Assistant Counsel Attachment

---