

**MEMO# 8721**

March 13, 1997

## **INSTITUTE COMMENTS ON MASSACHUSETTS RULE PROPOSAL**

\* See Memorandum to Investment Advisers Committee No. 10-97 and to State Liaison Committee No. 3-97, dated February 13, 1997. March 13, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 12-97 STATE LIAISON COMMITTEE No. 5-97 RE: INSTITUTE COMMENTS ON MASSACHUSETTS RULE PROPOSAL

\_\_\_\_\_ As we previously informed you, in February the Massachusetts Securities Division proposed for comment amendments to rules under the Massachusetts Uniform Securities Act that would revise and update various rules under the Act relating to broker-dealers, investment advisers, and their agents.\* Several of the rule revisions are intended to accommodate provisions from the National Securities Markets Improvement Act of 1996 ("NSMIA"). Attached is a copy of the comment letter the Institute filed with the Division. In its letter, the Institute recommends that the Division amend its proposal to: Exclude from the definition of "agent" those agents of a broker-dealer who effect de minimis transactions as permitted by the amendments in NSMIA to the Securities Exchange Act of 1934; Clarify the requirement that broker-dealers file a copy of their FOCUS report with the Division; Ensure that the Division's ability to "restrict or condition" a broker-dealer's business not be exercised in a manner that would be inconsistent with NSMIA; Expand the examination options available to supervisors of broker-dealers and to investment adviser representatives; Delete provisions relating to the use of supplementary sales materials; Limit provisions governing maintenance of customer complaints, the delivery of customer account statements, and the maintenance of a list of customers who do not want to be solicited, to be consistent with NSMIA; Clarify certain exclusions from the definition of "broker-dealer"; Replace the Division's current manual exemption with the Revised Manual Exemption as adopted by NASAA in 1996. [The major difference between the current exemption and the revised exemption is that the revised exemption is available to issuers if information concerning their offering is available through the SEC's EDGAR system.]; and Amend the exemption for internet offerings to permit such offerings if a notice filing has been filed with the Division. Tamara Cain Reed Associate Counsel Attachment (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8721.

should not be considered a substitute for, legal advice.