

MEMO# 5382

December 7, 1993

INSTITUTE COMMENTS ON PROPOSED CONNECTICUT REGULATIONS

December 7, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 37-93 RE: INSTITUTE COMMENTS ON PROPOSED CONNECTICUT REGULATIONS

As we previously informed you, the Connecticut Department of Banking recently issued proposed amendments to the regulations under the Connecticut Uniform Securities Act dealing with investment advisers. (See Memorandum to Investment Advisers Committee No. 34-93.) Attached is a copy of the Institute's comment letter on these proposed regulations. In its letter, the Institute expressed concern with several of the regulations that are not uniform with the provisions of federal law or the Uniform Securities Act or the NASAA Model Amendments thereto. These regulations govern supervision, record keeping requirements for investment advisers, examinations (i.e., inspections) by the Connecticut Commissioner of Securities and examination requirements for securities personnel. The proposed regulation governing supervision provides very detailed, minimum supervisory standards. The Institute expressed concern that this detail may be misconstrued as the maximum supervisory requirements and may preclude flexibility in tailoring a supervisory system to a particular registrant's needs. Also, some of the standards within the supervisory requirements are either vague or ambiguous. The Institute recommended that the regulation be amended to delete specific components of the supervisory system and require instead a supervisory system designed to ensure compliance with state and federal securities law. The proposed regulation governing record keeping requirements would mandate that specified records be kept at the adviser's principal place of business as well as at each of its Connecticut branch offices. The Institute's letter recommended that this regulation be amended to accommodate current technologies whereby the hard copy of the records could be maintained at the adviser's principal place of business and accessible to its branch offices via computer or otherwise. The proposed regulation governing inspections would grant the Commissioner broad authority to inspect the "records" of an adviser and to require the production of such records at any location determined by the Commissioner. The term "records" is defined to include virtually any document or communication present in an office of an adviser. The Institute's letter recommended that: the definition of "record" be limited to those records which are required by law to be maintained; the Commissioner's inspection authority be limited to those areas that are used to transact business pursuant to the Connecticut Uniform Securities Act; and the regulation be amended to require production of records at the location where the records are required to be maintained. Finally, the proposed regulations would mandate that investment adviser agents pass the Series 65 examination. Exempted from the examination requirement are persons who have not been the subject of any disciplinary proceeding and who are associated with an adviser as of October 1, 1994. The Institute recommended that this regulation be amended to:

consider evidence of an agent's competence or proficiency in lieu of the Series 65 examination; exclude solicitors from the examination requirement; and limit the scope of disciplinary proceedings that would necessitate an agent having to take the examination.
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