

**MEMO# 7294**

September 27, 1995

## **VERMONT ISSUES FOR COMMENT PROPOSED INVESTMENT ADVISER RULES**

September 27, 1995 TO: INVESTMENT ADVISER ASSOCIATE MEMBERS No. 38-95  
INVESTMENT ADVISERS COMMITTEE No. 39-95 RE: VERMONT ISSUES FOR COMMENT  
PROPOSED INVESTMENT ADVISER RULES

The Vermont Securities Division recently published for comment proposed investment adviser rules. These rules are, in large part, uniform with the NASAA Model Amendments to the Uniform Securities Act and consistent with the Investment Advisers Act of 1940 and the rules thereunder. The Institute has filed a comment letter with the Vermont Securities Division recommending that the non-uniform provisions be amended to make them uniform. These non-uniform provisions and our comments thereon are summarized below.

**Rule 3.01, Vermont Certification Form** This rule would require the filing of a unique "Vermont Investment Adviser Certification Form" to obtain or renew a registration. Though a copy of this Form was not included with the proposed rules, the Institute presumes that it is the same Form that was recently provided to registrants as part of their renewal package for 1996. A review of the Form indicates that with one exception, which relates to the adviser being "in good standing" with the Vermont Department of Taxes, the information sought by the Division through the Form would be available through Form ADV, which must be filed with the Division, and Form ADV-S. Accordingly, the Institute strongly recommends that the Division require the annual filing of Form ADV-S in lieu of the Division's unique Form. We also note that adoption of the Form ADV-S should facilitate the Division's use of the Central Registration Depository ("CRD") when the CRD is redesigned to accommodate investment adviser registrations. With respect to the Department of Taxes information, the Institute recommends that, to the extent the Division wishes to obtain such information, it do so through the Tax Certification Form it has previously used.

**Rule 3.03, Examinations Requirements** The Division has proposed requiring all investment adviser representatives to pass the Series 65 or 66 examinations and either (1) pass the Series 2 (General Securities Representative Non-Member Examinations) or Series 7 (General Securities Representative Examination) or (2) successfully complete a nationally recognized course of study (e.g., the CFA or CFP examinations). The Institute recommends that, consistent with the NASAA Model Amendments, (1) representatives not be required to take any test in addition to the Series 65 or 66 and (2) persons currently registered with the Division be exempt from having to qualify by examination. In the event the Division insists upon representatives passing the Series 2 or 7, the Institute further recommends that the Division add as an alternative the Series 6, which relates to investment company products and annuity contracts.

**Rule 3.04, Supervision** The Institute strongly recommends that the Division delete a provision that would require each adviser to "have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and

experience of each person prior to making a certification in the application of such person for registration." The Institute comments that this requirement is vague and ambiguous and enforcement will be arbitrary due to the subjective nature of the certification. Rule 3.15, Books and Records While proposed Rule 3.15 would require investment advisers to maintain the same records they are required to maintain under the NASAA Model Amendments and federal law, the proposed Rule imposes a longer retention schedule -- 6 years rather than 5 years. The Institute strongly recommends that the Division amend the rule to address this. As noted in the Institutes comment letter, because of the nature of advisory records, practically speaking, the rule would have the effect of requiring advisers to maintain all of their records, without regard to the state of origin, for the six years required by Vermont. A copy of the Divisions proposed rules and the Institutes comment letter are attached. Tamara K. Cain Assistant Counsel Attachments

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