

MEMO# 9010

June 24, 1997

INSTITUTE COMMENTS ON RULES PROPOSED BY UTAH

June 24, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 21-97 STATE LIAISON
COMMITTEE No. 19-97 UNIT INVESTMENT TRUST COMMITTEE No. 44-97 RE: INSTITUTE
COMMENTS ON RULES PROPOSED BY UTAH

The Utah Division of Securities recently proposed for comment rules that are intended to implement amendments recently added to the Utah Securities Act in response to enactment of the National Securities Markets Improvement Act of 1996 ("NSMIA"). A copy of the relevant portions of the proposed rules is attached. In response to the Division's request for comments, the Institute has filed the attached comment letter. For the most part, the Institute's comments were largely technical and were designed to ensure conformity with NSMIA and the rules adopted by the SEC thereunder. For example, the Institute's letter recommends that the proposed rules be amended to reflect the fact that: Use of the Form ADV-S has been discontinued by the SEC; State-registered advisers will no longer be making any filings with the SEC; The "holding out" provision in Utah's de minimis exemption is no longer enforceable; and Utah's provisions relating to recordkeeping, net capital, bonding, and financial reporting requirements will no longer be applicable to those out-of-state investment advisers that are registered in their home state and in compliance with such state's requirements in these areas. In addition, the Institute's comment letter recommends that the proposed rule relating to dishonest and unethical practices be amended to clarify that: with respect to federally registered advisers, such practices may only be sanctioned by the Division if they involve fraud or deceit; and that the Division not require an executed Form U-2, Uniform Consent to Service of Process, be filed by those persons that have filed an executed Form U-4, Form ADV, or Form BD, inasmuch as each of these forms contain a consent to service of process. Finally, the Institute's letter recommends that the Division adopt NASAA's revised manual exemption in place of the state's existing manual exemption and that, in lieu of deleting Utah's secondary trading exemption for unit investment trusts (UITs) as proposed by the Division, it be amended to provide an exemption for UITs from the notice filing requirements for sales in the secondary market. Tamara K. Reed Associate Counsel Attachments (in .pdf format)