

MEMO# 8688

March 5, 1997

INSTITUTE SUPPLEMENTAL LETTER ON PROPOSED INVESTMENT ADVISER RULES

* See Memorandum to Investment Advisers Committee No. 9-97, dated February 11, 1997, for a copy of the Institute's initial comment letter. March 5, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 11-97 RE: INSTITUTE SUPPLEMENTAL LETTER ON PROPOSED INVESTMENT ADVISER RULES

The Institute has submitted a supplemental comment letter on the SECs proposed rules to implement the Investment Advisers Supervision Coordination Act (the "Act"), the investment adviser provisions of the National Securities Markets Improvement Act.* The Institutes supplemental letter responds to the comment letter filed by the North American Securities Administrators Association (NASAA). Set forth below is a summary of the Institutes letter. Copies of the Institutes supplemental letter and NASAAs comment letter are attached. The supplemental letter focuses on two issues of threshold importance in the SECs rulemaking - first, the extent to which the Act preempts state laws regulating investment advisers registered with the SEC; and second, the SECs proposed definition of "investment adviser representative." In its letter, NASAA asserts that the Act only preempts state authority to require registration with the state by an SEC-registered adviser and to impose other requirements that "flow from" such state registration. Thus, NASAA seems to believe that the Act retains state authority to impose any requirements that, by their terms, apply to all advisers doing business in their state, as opposed to only advisers registered therein. In response, the Institute states that NASAAs view conflicts directly with the language, structure and unambiguous purpose of the Act. The letter states that Congress clearly intended the Act to reallocate the regulatory responsibilities of the SEC and the states with respect to investment advisers and not merely to exempt large advisers from the process of state registration. With respect to the term "investment adviser representative," NASAA claims that Congress intended for that term to be defined by the states rather than the SEC. The Institutes letter responds that, among other things, NASAAs position is untenable, if only in light of other assertions in NASAAs own letter. For instance, NASAAs letter endorses the SECs proposed definition of "place of business" (with certain modifications) and does not dispute the SECs authority to define other terms used in the Act. The Institutes letter further notes that states do not define the term "investment adviser representative" in a uniform manner. Thus, leaving it to the states to define that term would result in SEC-registered advisers being subject to disparate regulation at the state level -- a result directly in conflict with one of the overriding goals of the Act. Craig S. Tyle Vice President & Senior Counsel Attachments (in .pdf format)

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