

MEMO# 10552

December 11, 1998

ONTARIO ISSUES NOTICE OF PROPOSED RULE RELATING TO INTERNATIONAL ADVISERS

[10552] December 11, 1998 TO: INTERNATIONAL COMMITTEE No. 37-98 RE: ONTARIO
ISSUES NOTICE OF PROPOSED RULE RELATING TO INTERNATIONAL ADVISERS

The Ontario Securities Commission has proposed a rule (Rule 35-502) that would reformulate a prior policy statement (Policy 4.8) governing when a non-resident person will be deemed to be acting as an adviser in Ontario. A copy of the proposed rule is attached. It is also available on the Internet at <http://www.osc.gov.on.ca>. The proposed rule has significance for Institute members that advise or may advise mutual funds distributed in Ontario. Currently, the Ontario Securities Commission takes the position that investors in a fund are acquiring the advisory services of the fund's adviser and that the shares of the fund are distributed for the purpose of providing these advisory services. Thus, advisers to funds offered in Ontario are generally deemed to be providing advice to Ontario investors and are therefore subject to registration under the Ontario Securities Act. Policy 4.8 sets forth registration requirements for non-resident advisers who advise only certain clients, defined as "permitted clients", primarily with respect to foreign securities. These non-resident advisers are subject to a reduced level of regulation. "Permitted clients" include most institutional or sophisticated clients, but do not include mutual funds distributed by affiliates of the fund's adviser or principal underwriter. Among other things, the proposed rule would create a new "international adviser" category for registration and codify most of the requirements of Policy 4.8. In what we believe may be the most significant change for Institute members from Policy 4.8, the rule would change the definition of "permitted client" by striking the exception for mutual funds distributed by affiliates. Comments on the proposed rule are due to the OSC on December 31, 1998. The Institute is considering whether to comment on the proposed rule. If there are comments that you would like the Institute to make, please contact me by phone (202-371-5430), fax (202-326-5841) or e-mail (rcg@ici.org) no later than December 18, 1998. Robert C. Grohowski Assistant Counsel Attachment