

MEMO# 8595

January 28, 1997

INSTITUTE DRAFT COMMENT LETTER ON PROPOSED SEC RULES RELATING TO INVESTMENT ADVISERS

* See Memorandum to Investment Advisers Committee No. 30-96, dated December 23, 1996. January 28, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 3-97 RE: INSTITUTE DRAFT COMMENT LETTER ON PROPOSED SEC RULES RELATING TO INVESTMENT ADVISERS

As we previously informed you, the Securities and Exchange Commission has proposed new rules and forms and amendments to rules under the Advisers Act to implement those provisions in the National Securities Markets Improvement Act of 1996 (the "NSMIA") relating to investment advisers.* A meeting of members was held on January 14, 1997 to discuss these proposals. Attached is a draft letter on the proposal, which reflects a consensus of the attendees at that meeting. The draft letter generally supports the proposals, but suggests substantive revisions in a few areas and clarification in others. In particular, our letter recommends that the Commission: Clarify that suspension of Form ADV-S relieves registered advisers from all of the reporting requirements thereunder and that the updating requirements as set forth in Form ADV are still in effect; Extend the grace period proposed in Rule 203A-1 from 90 to 120 days and permit an adviser to amend its Schedule I if it again becomes eligible for Commission registration during the grace period; Amend the criteria for determining those advisers that are affiliated with Commission-registered advisers. In particular, we recommend elimination of the "same address" criterion; In defining "investment adviser representative": exclude sophisticated investors in determining whether the representative conducts a substantial portion of its business with natural persons; eliminate the asset test in determining whether a substantial portion of the representatives business is with retail clients; and, exclude registered representatives of broker-dealers. For purposes of the definition of "investment adviser representative", the Institute recommends that the Commission clarify that "place of business" is not intended to include locations visited by a representative; and Clarify that the only solicitors of Commission-registered advisers that should be subject to state regulation are those that are not employees of such advisers. 2 Each of these recommendations is discussed in detail in the Institutes letter. There are two areas of the letter in which the Institute requests additional input from members. The first is in the discussion of "affiliated advisers", wherein the Institutes letter recommends that the only criterion used to determine whether an adviser affiliated with a Commission-registered adviser is eligible for Commission registration is the Commissions proposed "control" test. The Institute is interested in our members views as to whether we should include additional examples demonstrating that the control test, by itself, would not be overly broad and would be an appropriate determinant of those affiliates that should be eligible for Commission registration. This

discussion is on pages 4-5 of the attached letter. The second area of the letter on which we request additional input is the discussion of the treatment of solicitors, which is on pages 10-11 of the letter. While the Institutes letter recommends that the Commission clarify that only those solicitors of Commission-registered advisers that would be regulated by the states are those that are not employees of the adviser, we request input from our members on (1) whether this is an appropriate recommendation and (2) whether we should include as a fall-back position that the Commission distinguish between persons that solicit retail accounts and those that solicit institutional or sophisticated client accounts when it comes to state regulation of solicitors. Comments are due to the SEC on the proposed amendments by Monday, February 10, 1997. Please provide your comments to the undersigned or, in my absence, to Amy Lancellotta no later than the close of business on Tuesday, February 4, 1997. Comments may be provided by phone (202/326-5825 for Tami or 202/326-5824 for Amy), fax (202/326-5827), or e-mail (tamara@ici.com or amy@ici.com). The Institute encourages members to file their own comment letters with the Commission. We would appreciate receiving a copy of any such letters. Tamara Cain Reed Associate Counsel Attachment (in .pdf format)

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