

MEMO# 952

February 2, 1989

INSTITUTE COMMENTS ON NEW YORK PROPOSED LEGISLATION

February 2, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 5-89 RE: INSTITUTE
COMMENTS ON NEW YORK PROPOSED LEGISLATION

As you may recall, a number of investment adviser legislative proposals have been introduced in the New York legislature during the past several years. The Institute attended a meeting in December, 1988 concerning a bill that the Attorney General's office believes should be adopted during the 1989 legislature. A copy of the proposed legislation and the Institute's comment letter are attached. In the attached letter, the Institute recommended to the New York Attorney General's office that a proposed non-uniform disclosure requirement in New York Assembly Bill 7528-A be deleted. The proposed non-uniform disclosure requirement would require that a written statement be given to prospective clients that registration in the state of New York does not constitute a certification or approval by the state. In our letter, we stated that we have worked closely with the North American Securities Administrators Association, Inc. (NASAA) and the SEC in developing a uniform registration and disclosure document that could be used at both the federal and state levels. We stated that practically all states that require disclosure by investment advisers have state disclosure laws similar to, or the same as, Investment Advisers Act Rule 204-3, the rule that requires advisers to deliver their "brochure" to clients and prospective clients. We wrote that a non-uniform disclosure provision such as the one proposed in Assembly Bill 7528-A undermines the entire system developed by the SEC and NASAA -- a uniform system of regulation that is both consistent with other state laws and coordinated with the federal system of regulation for advisers. We also stated that we did not believe the extra disclosure language would provide any additional investor protection. We also made a second recommendation with regard to the proposed New York legislation related to the investment adviser representative definition. Specifically, we recommended that the language be changed to permit solicitation of investment advisory accounts by licensed broker-dealers or registered representatives, provided that compensation is paid only from an affiliated entity, without having to comply with the registration requirements for investment adviser representatives. We argued that a registered representative or broker-dealer provides no investment advice in those solicitations and simply refers prospective clients to an affiliated investment advisory entity. We will continue to keep you informed of developments in New York. Robert L. Bunn, Jr. Assistant General Counsel Attachments

should not be considered a substitute for, legal advice.