

MEMO# 6211

September 12, 1994

INSTITUTE COMMENTS ON INVESTMENT ADVISER RULES PROPOSED BY ARIZONA SECURITIES DIVISION

September 12, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 49-94 ARIZONA ASSOCIATE MEMBERS RE: INSTITUTE COMMENTS ON INVESTMENT ADVISER RULES PROPOSED BY ARIZONA SECURITIES DIVISION

_____ As we previously informed you, the Arizona Securities Division (the "Division") recently issued for comment a draft copy of proposed rules governing the activities of investment advisers. (See Memorandum to Investment Advisers Committee No. 43-94 and Arizona Associate Members, dated August 4, 1994.) These proposed rules are intended to implement amendments to the Arizona Securities Act that were passed earlier this year that provide for the regulation of investment advisers. In large part, the proposed rules are consistent with the NASAA Model Amendments to the Uniform Securities Act or with Investment Advisers Act of 1940 and the rules promulgated there under. The Institute's comment letter discusses the inconsistent provisions in the proposal, the significant aspects of which are summarized below.

1. Account Statement Requirements The Division has proposed that advisers with discretionary authority be required to provide clients with quarterly account statements, and that advisers who charge fees other than on an hourly or flat fee basis be required to send out annual statements. With respect to the proposed quarterly statement requirement, the Institute recommends, consistent with federal law and the NASAA Model Amendments, that such statements only be required of those advisers with custody of client funds or securities. With respect to the annual statement requirement, the Institute recommends that this provision be deleted as unnecessary in that under current law the client would already possess or be provided such information.

2. Disclosure Requirements In addition to requiring advisers to comply with the federal "brochure" rule (i.e., SEC Rule 204-3), the Division has proposed that advisers disclose in writing to each client "the availability upon request of Part I of Form ADV and the nature of the information provided therein." The Institute recommends that advisers not be required to provide written disclosure relating to Part I of Form ADV in that the information contained in Part I would not be material to a client when assessing the adviser or the services to be provided by the adviser. The Division has further proposed that an adviser be prohibited from using any Form ADV or brochure disclosure to which the Division objects. The Institute recommends that this provision be deleted inasmuch as (1) it may result in non-uniform disclosure requirements -- e.g., disclosure that is acceptable to all other jurisdictions may be prohibited in Arizona -- and (2) there are no limits placed on when and under what circumstances the Division may exercise its authority to prohibit disclosure. Should the Division determine not to delete this provision, the Institute recommends that it be

amended to include specific standards governing when and under what circumstances the Division may object to an adviser's disclosure. 3. Advertisements The Division has proposed that all advertisements used by an adviser be filed with the Division at least ten days prior to use. The Institute recommends that this provision, which we believe will result in (1) the Division being inundated with pre- filed advertisements and (2) advisers being delayed in their communications with clients, be deleted. Should the Division determine not to delete this proposed rule, the Institute recommends that it be amended to require pre-filing only when explicitly requested by the Division. A copy of the Institute's comment letter on the proposed rules is attached. 2``PRINT . Cain Assistant Counsel Attachment

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