

MEMO# 6559

January 13, 1995

ARKANSAS DRAFTS PROPOSED AMENDMENTS TO SECURITIES ACT RELATING TO REGISTRATION OF INVESTMENT COMPANY SHARES AND INVESTMENT ADVISER REPRESENTATIVES

January 13, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 4-95 STATE LIAISON COMMITTEE No. 4-95 UNIT INVESTMENT TRUST COMMITTEE No. 4-95 ARKANSAS INVESTMENT ADVISER ASSOCIATE MEMBERS RE: ARKANSAS DRAFTS PROPOSED AMENDMENTS TO SECURITIES ACT RELATING TO REGISTRATION OF INVESTMENT COMPANY SHARES AND INVESTMENT ADVISER REPRESENTATIVES

The Institute has been provided a draft of proposed changes to the Arkansas Securities Act that the Arkansas Securities Department (the "Department") would like to have considered during the 1995 legislative session. The provisions relating to investment companies and investment advisers are summarized below. Investment Company Provisions The Department has proposed amendments to the Act that would: (1) Adopt the uniform registration dates from the NASAA Model Investment Company Registration and Reporting Procedures for mutual funds and unit investment trusts (see Section 22 of the draft); (2) Permit the Department to receive electronic registration filings (see Sections 5, 6, 8, and 20). These amendments are intended to accommodate the Securities Registration Depository ("SRD") when it becomes operational; (3) Exempt the registered agent of those mutual fund issuers that are registered with the Department from having to be an officer or partner of the issuer (see Section 10); and (4) Amend the number of prospectuses that must be filed with the Department for coordination registrations from three copies to one (see Section 20). Investment Adviser Provisions In large part, the amendments relating to investment advisers are intended to update the Act to reflect current policies and procedures of the Department. The substantive amendments include the following: (1) An amendment to the definition of "investment adviser" that would add news columns, newsletters, and business and financial services to the list of exempt publications, and would clarify that publications qualify for the exemption whether communicated in hard copy form, by electronic means, or otherwise, provided they do not render advice on the basis of specific client information (see Section 1); (2) An amendment that would add to the Act a definition of "investment adviser representative." (See Section 1. The Department currently requires the registration of such persons.) The proposed definition is identical to

the definition found in the NASAA Model Amendments to the Uniform Securities Act with the exception that the Department's definition does not include solicitors; (3) An amendment that would clarify that investment advisers registered with the Securities and Exchange Commission need not comply with the minimum net capital and aggregate indebtedness requirements of the Act (see Section 12); (4) Expanding the list of unlawful acts by investment advisers to include (1) making any untrue statement of a material fact or omitting to state a material fact, and (2) engaging in dishonest or unethical practices in the securities business (see Section 17); and (5) Authorization for the Department, upon notice and opportunity for hearing, to impose fines against investment advisers or representatives up to a maximum of \$5000 per violation (see Section 18). Miscellaneous Provisions Section 9 of the draft proposes amendments that would permit the Department to impose civil fines for violations of the Act or any rules adopted thereunder. Procedures for imposing such fines, which may not exceed "the total amount of money received in connection with the violation", are provided. Also, applications not completed within 180 days may be deemed abandoned by the Department and considered withdrawn, provided the applicant was notified of and given a reasonable opportunity to correct any deficiencies (see Section 11). A copy of the Department's proposed legislation is attached. Please provide me with any comments on this proposal by Friday January 27, 1995. I can be reached by phone at 202/326-5825 or by fax at 202/326-5828. Tamara K. Cain Assistant Counsel Attachment