

MEMO# 7236

September 1, 1995

ARIZONA SECURITIES DIVISION RE- PROPOSES INVESTMENT ADVISER RULES

1 See Memorandum to Investment Advisers Committee No. 43-94 and Arizona Associate Members, dated August 4, 1994. September 1, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 35-95 ARIZONA ASSOCIATE MEMBERS RE: ARIZONA SECURITIES DIVISION RE-PROPOSES INVESTMENT ADVISER RULES

_____ In August 1994, the Arizona Securities Division issued for comment proposed rules to implement provisions added to the Arizona Securities Act that provided for the regulation of investment advisers.¹ In the year since these rules were proposed, they have been substantially revised by the Division as a result of comments received and are now being reissued for comment. A copy of the revised proposal is attached. One major distinction between the previous draft and the current draft is that, while the provisions in the previous draft applied to licensed advisers or persons required to be licensed as an adviser, the revised proposal applies to all investment advisers -- including those exempt from licensure. For the most part, the revised rule proposal is consistent with either the Investment Advisers Act of 1940 ("the Advisers Act") and the rules promulgated thereunder or the NASAA Model Amendments to the Uniform Securities Act. Some of the exceptions to this, however, are: Rule 6-201, Books and Records In addition to the requirements under the Advisers Act, this rule would require each adviser to maintain: a file containing each customer complaint received; a copy of correspondence relating to a clients account in that clients file; and, the clients written acknowledgment as required by Rule 6-205. Rule 6-203, Dishonest and Unethical Practices Included in the list of dishonest and unethical practices are: (1) failing to disclose in writing to advisory clients "undisclosed, conflicting securities positions"; (2) failing to disclose "in writing to the client, all disciplinary questions affirmatively answered in Part I of Form ADV, and the answers thereto"; (3) failing to have a written contract with advisory clients, even those to whom the adviser provides only impersonal advice; (4) for advisers with discretionary authority, failing to provide itemized customer statements containing specified information on both an annual and a quarterly basis; and (5) for advisers that charge fees other than on an hourly or fixed fee basis, failing to provide an itemized statement, on at least an annual basis, indicating the total fees and commissions earned by the adviser during the period. Rule 6-205, Information to be Furnished to Clients This rule would require each adviser to disclose in writing to each client initially retained after the effective date of the rule the availability upon request of Part I of Form ADV and the nature of the information provided therein. The adviser must maintain in each client file a statement acknowledging receipt of the disclosure. Compliance with this provision, however, will not alleviate an advisers duty to provide the disciplinary information from Part I of Form ADV to clients as would be required by Rule 6-203. Rule 6-208, Advertisements This rule would, "when requested by the Commission", require the

filing of an advertisement at least ten days prior to its proposed use. Comments are due to the Division no later than Thursday, October 19, 1995. Please provide me by phone (202/326-5825) or by fax (202/326-5839) with any comments you may have on the proposed rules by Monday, September 11, 1995. Tamara K. Cain Assistant Counsel
Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8305 or (202)326-5903, and ask for this memo's attachment number: 7236.

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