

**MEMO# 7051**

June 26, 1995

# **NEW MEXICO PROPOSES AMENDMENTS TO EXAMINATION REQUIREMENTS AND RULES OF CONDUCT FOR INVESTMENT ADVISERS**

June 26, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 29-95 NEW MEXICO ASSOCIATE MEMBERS RE: NEW MEXICO PROPOSES AMENDMENTS TO EXAMINATION REQUIREMENTS AND RULES OF CONDUCT FOR INVESTMENT ADVISERS

The New Mexico Securities Division has proposed amendments to rules under the New Mexico Securities Act that govern the registration and conduct of investment advisers. In particular, the Division has proposed that Rule 86-4.01, relating to licensing procedures, be amended to (1) require the Series 65, Uniform Investment Adviser Law Examination, instead of the Series 63, Uniform Securities Agent State Law Examination, and (2) provide additional qualification options for investment advisers. The additional options include: the Series 7, General Securities Registered Representative Examination; the Series 62, Corporate Securities Representative Examination; and a CFA, CIC, CFP, ChFC, APFS, or IAFP designation. The Division has proposed both technical and substantive amendments to Rule 86-4.06, Rules of Conduct. Subsection (B)(1) would be amended to delete a provision that permits advisers to enter into performance fee agreements that are in compliance with Rule 205-3 under the Investment Advisers Act of 1940. The Division has proposed deleting this provision because it is in conflict with a provision in the New Mexico Securities Act that prohibits performance based compensation. Section G of the Rule would be amended to clarify that: (1) the designated supervisor of a branch office must meet the specified supervisory requirements at the time the branch office opens for business; and (2) if, after opening for business, the branch office ceases to be in compliance with the designated supervisor requirement, the adviser has 90 days to come into compliance, provided that the adviser provides the Division written notice of noncompliance within 5 days of such event and sets forth the method of supervision pending the replacement of the designated supervisor. Also, the Division has proposed adding a new subsection to Section G that would address supervision of single-representative offices. As proposed, a single representative office need not have a designated supervisor physically located at such office provided the adviser employs, on a full-time basis, a person qualified under the Act as a designated supervisor and the adviser: (1) has a designated supervisor conduct an annual on-site field audit of each single- representative office. The audit must include, but is not limited to, an examination for compliance with books and records requirements, business practice prohibitions, and rules of conduct; (2) maintains in its principal office the results of all field audits conducted pursuant to (1); and (3) sends letters annually "to a statistically

valid sampling of the clients of investment adviser representatives operating from single-representative offices to determine if such representatives are complying with all applicable laws and regulations." A copy of the proposed amendments to Rules 86-4.01 and 86-4.06 is attached. The Division has requested comments by July 26, 1995. Persons having any comments on the proposed amendments should contact me by phone (202/326-5825) or by fax (202/326-5839) no later than Friday, July 7, 1995. Tamara K. Cain Assistant Counsel  
Attachments

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