

**MEMO# 9051**

July 9, 1997

## **NORTH DAKOTA PUBLISHES BUSINESS CONDUCT RULES FOR COMMENT**

July 9, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 23-97 SEC RULES COMMITTEE No. 67-97 STATE LIAISON COMMITTEE No. 20-97 RE: NORTH DAKOTA PUBLISHES BUSINESS CONDUCT RULES FOR COMMENT

The North Dakota Securities Commissioner recently published for comment revisions to various administrative rules, including Rule 73-02-09-01, relating to fraudulent practices in connection with the offer or sale of securities, and Rule 73-02-09-02, relating to grounds to suspend or revoke the registration of a broker-dealer, state-registered investment adviser, or their representatives. A copy of the amendments proposed to these two rules is attached. In response to the Commissioner's request for comments, the Institute filed the attached letter, which is summarized below. Rule 73-02-09-01 The Institute's letter notes that the Commissioner proposes to amend this existing rule, which deems it fraudulent for any person to contradict or negate the importance of information in a prospectus if done "with intent to deceive", to delete the phrase "with intent to deceive." The Institute strongly opposes this change on the basis that it: (1) may have a chilling effect on communications between mutual fund shareholders and financial professionals; (2) would deem non-fraudulent and non-deceptive behavior to be fraudulent; and (3) would be so overly broad as to prohibit perfectly lawful behavior. The Institute also recommends that the Commissioner revise proposed subsection 7 of this rule, which would deem fraudulent the failure by a registrant to advise a customer both at the time of solicitation and sale "of any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions." Based upon concerns that this provision imposes disclosure obligations beyond those required under federal law, it characterizes non-fraudulent behavior as fraudulent, and is violative of the National Securities Markets Improvement Act of 1996 ("NSMIA"), the Institute recommends that the rule be amended to expressly provide that it does not apply to the offer or sale of any "covered security" as such term is defined in the Securities Act of 1933. Rule 73-02-09-02 The Institute's letter recommends that subsection 3, relating to books and records maintained by registrants, subsection 6, relating to disclosure of commissions and compensation, and subsection 7 of this rule, which lists various practices deemed to impede a competitive market environment, be amended as necessary to ensure they are not applied in a manner that would violate provisions of NSMIA. Tamara K. Reed Associate Counsel Attachments

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.