

MEMO# 1882

May 2, 1990

INSTITUTE TESTIFIES ON NASAA PROPOSED REVISIONS TO MODEL AMENDMENTS AND UNIFORM RULES; MEMBERSHIP ADOPTS AMENDED PROPOSAL

May 2, 1990 TO: INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 14-90 INVESTMENT ADVISER MEMBERS NO. 15-90 RE: INSTITUTE TESTIFIES ON NASAA PROPOSED REVISIONS TO MODEL AMENDMENTS AND UNIFORM RULES; MEMBERSHIP ADOPTS AMENDED PROPOSAL _____ The Financial Planner/Investment Adviser Committee of the North American Securities Administrators Association, Inc. (NASAA) held a meeting on April 27, 1990 to consider its proposed revisions to the model amendments and uniform rules. (See Memorandum to Investment Advisers Committee No. 11-90, dated March 28, 1990.) Attached is a copy of the Institute's testimony on the Committee's proposed revisions. In its testimony, the Institute expressed a general objection to the "Dishonest or Unethical Practices" rule. In addition, the Institute had several specific objections to items in the rule. We commented that subparagraph (j), concerning the reasonableness of advisory fees, is, in effect, rate-setting and that it creates a competitive disadvantage to advisers. In addition, the Institute recommended that the factors for determining the reasonableness of an advisory fee, such as the sophistication of the client, not be struck from the provision. The Institute also recommended that subparagraph (a) of the rule be revised to state that an adviser, when making a suitability determination, is only obligated to examine the records provided by the client. The Institute also objected to the proposed requirement for investment adviser representatives to disclose their disciplinary background. The Institute further testified that broker-dealers and their registered representatives should be exempted from the definition of "solicitor," provided they are already subject to appropriate state regulation. After considering the Institute's and other participants' comments, the Committee made several changes to the proposed revisions before submitting them to a vote by the membership. Specifically, the Committee changed, among other things, the language in Rule 102(a)(4)-1(j) to delete everything following the word "reasonable." Moreover, the Committee agreed with the Institute that an adviser should only be obligated to examine records provided by the client when determining the suitability of a security. In addition, the Committee has decided to postpone submitting Rule 102(a)(4)-2, concerning disclosure of certain financial and disciplinary information, to a membership vote until further consideration. The membership approved the proposed revisions to the model amendments and uniform rules. We will keep you informed of developments. Amy B. Rosenblum Assistant General Counsel Attachment

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