

MEMO# 3553

February 28, 1992

INVESTMENT ADVISER LEGISLATION INTRODUCED IN THE SENATE

February 28, 1992 TO: BOARD OF GOVERNORS NO. 15-92 SEC RULES MEMBERS NO. 10-92
INVESTMENT ADVISER MEMBERS NO. 8-92 INVESTMENT ADVISER ASSOCIATE MEMBERS NO.
7-92 RE: INVESTMENT ADVISER LEGISLATION INTRODUCED IN THE SENATE

On February 26, Senator Chris Dodd, Chairman of the Senate Banking Securities Subcommittee, introduced the "Investment Adviser Oversight Act of 1992". This legislation was developed with the Securities and Exchange Commission to improve regulation of the investment adviser industry. Set forth below is a summary of the bill. Annual Fees In his statement introducing the bill, Chairman Dodd notes that the "industry's growth has far exceeded the SEC's resources to police the industry." The bill addresses this problem by imposing an annual fee on SEC registered investment advisers. The fee ranges from \$300 for advisers with assets under management of \$10 million or less to \$7,000 for advisers with over \$5 billion under management. The revenue collected by the SEC from the annual fee must be used to recover its costs of enhanced supervision and regulation of investment advisers and their activities, such as its costs in connection with investment adviser inspections. The Institute had testified in support of this type of an annual fee, except that the Institute strongly recommended that investment company assets be excluded from the assets of an adviser under management in determining the fee since investment companies currently pay considerable fees to the SEC and are already subject to rigorous oversight under the Investment Company Act. (See Memorandum to Board of Governors No. 14-92, SEC Rules Members No. 9-92, Investment Adviser Members No. 7-92 and Investment Adviser Associate Members No. 6-92, dated February 26, 1992.) Fidelity Bond The bill authorizes the SEC to require advisers with custody of client funds or securities, that have discretionary authority to direct client investments, or that advise investment companies to obtain a fidelity bond. (Section 17(g) of the 1940 Act currently only requires officers and employees of the investment company to be bonded. This requirement will be amended to extend to employees of advisers to investment companies.) The Institute had testified in support of a fidelity bond requirement. Suitability Requirement The bill adds an express suitability requirement under the Advisers Act. In order to satisfy this requirement, investment advisers first must obtain from the client information concerning his or her financial situation, investment experience, and investment objectives. Based on this information, and any other information known to the adviser, the adviser reasonably must determine that the investment advice to be provided is suitable for that client. The Institute had testified in support of including a suitability requirement under the Act. One-Stop Filing The bill authorizes the SEC to develop and implement a one- stop filing system. This system would allow an adviser to make one filing at one location and have the contents of that

filing electronically communicated to the SEC and the states in which the adviser wishes to register. * * * A copy of the Senate bill and related materials is attached. We will keep you informed of developments. Amy B.R. Lancellotta Associate General Counsel Attachment

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