

LEGISLATIVE BILL 938

Approved by the Governor March 12, 1990

Introduced by Conway, 17

AN ACT relating to investment advisers; to amend section 8-1102, Reissue Revised Statutes of Nebraska, 1943; to authorize the Director of Banking and Finance to exempt investment advisers from certain contract requirements; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-1102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1102. (1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud the other person; or

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) ~~It~~ Except as may be permitted by rule or order of the director, it shall be unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion

of the funds of the client;

(b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subdivision (a) of this subsection shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (b) of this subsection, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Sec. 2. That original section 8-1102, Reissue Revised Statutes of Nebraska, 1943, is repealed.