MEMORANDUM

DATE: JANUARY 21, 2000

TO: USA DRAFTING COMMITTEE, ADVISORS, AND OBSERVERS

FROM: JOEL SELIGMAN

RE: COVER MEMORANDUM AND AGENDA, FEBRUARY 25-27, 2000

Let me express my gratitude for the several comment letters forwarded before and after our October 1999 meeting. Many of the comments are reflected in this revised Discussion Draft or the questions included in this cover memorandum.

I have renumbered the provisions of this Draft in accordance with NCCUSL Protocol.

Attachment A compares the new organization to that in the October Draft.

Attachment B is an agenda for our February 25-27, 2000 meeting.

It will be useful if comment letters on this Draft are received by Dick Smith and me by February 15, 2000. This will allow me to take these comments into account before the February meeting.

In addition to comments on the new Draft and questions suggested by bracketed language, let me specifically invite comments on the following topics:

1. In §101(c)(5) the extra-state broker-dealer is an exclusion from the definition of broker-dealer. In §101(n) there is no comparable exclusion from the definition of investment adviser. Instead, in §402(a) the extra-state investment adviser is given a registration exemption. This is the same treatment as in the 1956 and 1985 Acts. Is this differentiated treatment between broker-dealers and investment advisers the right result?

2. Do we want to be sure that state filings by issuers, broker-dealers, agents, investment advisers and investment adviser representatives can, when technology permits, be accomplished effectively when done electronically

and centrally, with the SEC, NASD or a central registration depository? Should this be explicitly provided in the definition of "file", "filed" or "filing" in §101(g)? Would articulation of references to such in the Official Comments be sufficient?

3. Should we expand §101(n)(2) to include employees of depository institutions or international banks? Alternatively, should the exclusion in §101(n)(2) for depository institutions be eliminated as inconsistent with the Gramm-Leach-Bliley theory of financial regulation?

4. Should the SIA proposal in Comment 5 to §101(n) be added to §101(n)?

5. Is §101(u)(6)(B) too broad? Would it permit blank check companies to issue stock without consideration? Should this Subsection be limited to (1) securities issued by an issuer in the issuer company and (2) a parent issuing shares of a subsidiary or affiliated company but only if the spun-off company will be a reporting company under the federal securities laws?

6. Should §201(e) be limited to regulated public utilities? Should public utilities, railroads, and common carriers only be exempted if there is state regulation with respect to issuance of securities?

7. Should the §201(g) nonprofit exemption not apply to debt securities?

8. Should §202(a) be limited to nonissuers?

9. Should §202(b) also apply to agents of exempt broker-dealers?

10. Should there be a notice filing requirement under §202(k)? See also Comment 5 to §202(k).

11. Should §202(n) be deleted or narrowed? See Comment 2 to §202(n).

12. Should standards be added to §203(a) for exercising the delegation authority? Is §203(b) sufficient and appropriate?

13. Should §302(d) only be enforceable by a civil fine?

14. Should documents be required to be filed with the States under §§302(a)(1)-(2), (b), or (c), or is it sufficient that the States receive notice of filings with the SEC, together with required fees?

15. Should §302(a)(3) be deleted as unnecessary?

16. Should the 1956 Act §304(d) or RUSA §§304(c)-(d), see Comments 1-2 to §304, be included in this Act? Should the Administrator have the authority generally to lessen the information required by §304?

17. Should effectiveness in §305(k) have to wait until the Administrator so orders?

18. Should language be added to §306 to authorize the States to deny effectiveness to an offering made by a development stage company that has no specific business purpose or plan and has indicated that its business purpose or plan is to engage in a merger or acquisition with an unidentified company, entity, or person? Cf. Sec. Act Rule 419.

19. Should language be added to §306 codifying the meaning of "willfully" articulated in Comment 3?

20. I have retained the earlier organization of Part D rather than separately treat broker-dealer, agents, investment advisers, and investment adviser representatives. Are the new capitalized subsection introductory phrases sufficient to ensure clarity?

21. Should there be one registration or notice filing or annual and renewal registrations or notice filings? See, e.g., §401(g).

22. Should agents and investment adviser representatives selling or advising on exempt securities under §201 for an issuer also be exempt from §402? As currently drafted, agents and adviser representatives would be exempt if the securities they sell or advise on are limited to any of the following: utilities, railroads, municipals, governments, options, nonprofits. This is distinct from federal treatment.

23. Should the §402(b)(3) exemption by agents be conditioned on there being payment of compensation based on the transactions? This would restrict finders fees.

24. Should §405(a)(2) also include (1) SEC cease and desist orders; (2) a cease and desist order issued by another State when the State Administrator found a willful violation of the State's securities laws; and/or (3) liability in a civil action when there is a final judgment by a court of competent jurisdiction?

25. Should §405(e) be redrafted to parallel Securities Exchange Act Rule 15b6-1, which was recently amended to provide the SEC more flexibility?

26. Should an implied cause of action be permitted under §§501 or 502?

27. Should the qualified immunity §507 be omitted and only restored if and when the SEC adopts a counterpart Rule for arbitration proceedings?

28. Should §509(c) be limited to control person liability as is done in §20(a) of the Securities and Exchange Act or should it continue to reach persons who aid and abet securities violations?

29. Do parts of §510 need to be redrafted to take into account the Internet and new electronic communications means? If so, how?

30. Section 602(e) is addressed to the so-called reciprocal subpoena situation. Congress has instructed the SEC to work with state securities administrators on that subject. One problem that has been cited is that if administrator in State A asks to have a subpoena served in State B, administrator B may be willing to lend B's jurisdiction to the effort, but not B's manpower in what could become extensive enforcement proceedings in B's courts. Would it be useful and feasible to authorize B to move for admission of A's attorneys in B's courts to prosecute the subpoena if that becomes necessary? Is the current draft of §602(e) sufficient?

31. Should restitution or disgorgement in §603(a) be limited to a recovery by the injured party, rather than the State?

32. Should the Act be amended in §§604 or 609 to add efficiency for registrants in filings as a purpose of the Act?

33. Should additional subsections be added to §606(b) to expressly permit confidential treatment for (1) information received under §605 or (2) information obtained by the Administrator through a Central Registration

or other Depository (CRD) when the information is subsequently deleted from the CRD system or designated as nonpublic under the CRD system?