

MEMO# 9164

August 13, 1997

INSTITUTE RECOMMENDATION REGARDING CERTAIN INVESTMENT ADVISER REPRESENTATIVES' ACCEPTANCE OF ACCOMMODATION CLIENTS

* See Memorandum to Investment Advisers Committee No. 24-97, dated July 10, 1997.
[9164] August 13, 1997 TO: INVESTMENT ADVISERS COMMITTEE No. 27-97 RE: INSTITUTE
RECOMMENDATION REGARDING CERTAIN INVESTMENT ADVISER REPRESENTATIVES'
ACCEPTANCE OF ACCOMMODATION CLIENTS

As we recently reported, the Securities and Exchange Commission has expressed concern that, by not adopting an asset test as an alternative criterion to a client test for purposes of the definition of "investment adviser representative" under Rule 203A-3(a) under the Advisers Act, an adviser representative who handles institutional client accounts may be limited as to the number of accommodation clients it may accept without falling within that definition.* The Institute has submitted a letter to the Commission staff recommending that the definition of "investment adviser representative" be amended to address this concern. A copy of the Institutes letter is attached. Specifically, the letter recommends that persons affiliated with non-natural clients (i.e., directors, officers, trustees or employees of, or consultants to, institutional, business, charitable and other similar types of clients) be excluded from treatment as natural persons under the rule, so long as the representative does not advertise his services or otherwise engage in general solicitation activities to obtain such clients. Thus, a representative would not be able to do a mass mailing to all employees of a charitable foundation it advises. A representative would, however, be able to describe and offer its services in a private meeting with the president of a bank client. Amy B.R. Lancellotta Associate Counsel Attachment (in .pdf format)