

MEMO# 6129

August 17, 1994

HOUSE COMMITTEE REPORTS H.R. 4858, SMALL BUSINESS INCENTIVE ACT BILL WITH NARROW 1940 ACT EXEMPTION

August 17, 1994 TO: BOARD OF GOVERNORS NO. 79-94 FEDERAL LEGISLATION COMMITTEE
NO. 22-94 FEDERAL LEGISLATION MEMBERS NO. 19-94 SEC RULES COMMITTEE NO. 91-94
RE: HOUSE COMMITTEE REPORTS H.R. 4858, SMALL BUSINESS INCENTIVE ACT BILL WITH
NARROW 1940 ACT EXEMPTION

H.R. 4858, "The Small Business Incentive Act" was reported by the House Energy and Commerce Committee on August 5. The bill purports to stimulate small business development by exempting certain securities from registration under the '33 Act and by exempting certain pools of securities from registration under the '40 Act. It also liberalizes various securities law provisions governing business development companies. The Institute testified before the House Telecommunications and Finance Subcommittee on this issue in July. (See Institute Memo to Board of Governors No. 67-94, SEC Rules Committee No. 85-94, Federal Legislation Committee No. 17-94 and Federal Legislation Members No. 14-94, dated July 28, 1994). The bill is similar to Senate-passed S. 479, the "Small Business Incentive Act of 1993" (please see Institute Memo to Federal Legislation Committee No. 7-93 and Federal Legislation Members No. 7-93, dated March 24, 1993) except in three important respects: 1) exempt pools must invest at least 50% of their securities in small businesses; 2) these pools may be only marketed to "qualified purchasers," statutorily defined without any delegation of authority to the SEC. The bill would generally define "qualified purchasers" as natural persons that own at least \$10 million and other entities that own at least \$100 million in securities of unaffiliated issuers; and 3) BDCs generally would still have to purchase their portfolio securities directly from the issuer. - 2 - The Institute supported each of these changes and argued, along with the North American Association of Securities Administrators, against unnecessary weakening of the investor protections in the '40 Act. While considering H.R. 4858, Energy and Commerce Committee Chairman Dingell said he would oppose any attempt to weaken the bill, citing his concern about investor protection and the lack of SEC resources. Chairman Dingell also raised the prospect of oversight hearings on business development companies (BDCs) in the face of a Wall Street Journal article citing fraud in these programs. No further action is anticipated on the bill until after the August recess. Statements by Chairman Dingell and Markey, a copy of the bill, and an Institute letter to the Energy and Commerce Committee are attached. This memo can be found on FUNDS, the Institute's Fund User Network and Delivery System, under "Legislative Affairs; Washington Update." Julie Domenick Senior Vice President Legislative Affairs

Attachments

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