

MEMO# 7426

November 15, 1995

SEC STAFF LETTER PERMITTING ADVERTISING OF PAST PERFORMANCE

November 15, 1995 TO: DIRECT MARKETING COMMITTEE No. 50-95 MARKETING POLICY COMMITTEE No. 57-95 PUBLIC INFORMATION COMMITTEE No. 42-95 SALES FORCE MARKETING COMMITTEE No. 54-95 SHAREHOLDER COMMUNICATIONS COMMITTEE No. 42-95 RE: SEC STAFF LETTER PERMITTING ADVERTISING OF PAST PERFORMANCE

The Division of Investment Management recently granted no-action relief to a registered investment company with several series ("Funds") that sought to include as part of standardized average annual total return, performance of the Funds predecessor unregistered separate investment accounts ("SIAs"). The staff permitted the Funds to include this performance information in prospectuses, statements of additional information, advertisements, and sales literature. The SIAs originally were created as investment vehicles for pension plans and were exempt from registration under Section 3(c)(11) of the Investment Company Act of 1940 ("Investment Company Act"). Shortly before the effective date of the Funds registration statement, the assets of each SIA were transferred to a corresponding series of the fund in exchange for fund shares. A copy of the request for no-action relief and the staffs response are attached. The Funds represented, in part, that: the Funds effectively are continuations of pre-existing accounts that were created for purposes entirely unrelated to the establishment of a performance record; each series is managed in a manner that is in all material respects equivalent to the management of the corresponding SIA; and any quotation of performance would be accompanied by disclosure that the quoted performance data includes the performance of the SIAs for periods before the Funds registration statement became effective, the SIAs were not registered under the Investment Company Act and therefore were not subject to certain investment restrictions that are imposed by the Investment Company Act, and if the SIAs had been registered under the Investment Company Act, the SIAs performance may have been adversely affected. In addition, the staffs letter permits the Funds to restate the past performance of the SIAs to reflect the Funds fees and expenses, as stated in the fee table in the Funds initial prospectus. Finally, the staff stated that the letters analysis also would apply to a registered investment company that previously was a private investment company or a common trust fund. Dorothy M. Donohue Assistant Counsel