

**MEMO# 4759**

May 4, 1993

## **PROPOSED ELECTRONIC MONITORING LEGISLATION**

May 4, 1993 TO: OPERATIONS COMMITTEE NO. 19-93 SEC RULES COMMITTEE NO. 43-93  
TRANSFER AGENT ADVISORY COMMITTEE NO. 33-93 RE: PROPOSED ELECTRONIC  
MONITORING LEGISLATION

Attached for your review is a copy of H.R. 1900, the "Privacy for Consumers and Workers Act." This proposed legislation is intended to prevent abuses of electronic monitoring in the workplace. The bill defines "electronic monitoring" to include, among other things, "telephone service observation," which in turn is defined to mean "the practice of listening to or recording telephone calls being made by, or received by, an employee in order to monitor the quality of service provided by the employee." As you may recall, similar legislation (H.R. 1218) was introduced in Congress but did not pass last year. As reported by the House Education and Labor Committee last July, H.R. 1218 contained an exemption for securities industry employers from most of the bill's provisions. H.R. 1900 contains a similar, but narrower exemption. Specifically, under section 13(c)(2)(B) of H.R. 1900, securities industry employers would be exempt from all provisions of the Act except sections 4(a), 4(b)(1), 4(b)(2), 4(b)(4), 7, 8 and 9. Those sections are summarized below. Section 4(a) requires the posting of a notice from the Department of Labor informing employees (1) that the employer engages or may engage in electronic monitoring, (2) when additional notice may be required, and (3) what rights and protections are provided to employees under the Act. The other subsections of section 4 listed above require an employer to provide prior written notice to any employee who will be electronically monitored, detailing the forms of electronic monitoring to be used, the "personal data" (discussed further below) to be collected and the use to be made of such personal data. Section 7 of the bill requires, generally, that employees be provided a reasonable opportunity to review all "personal data" obtained through electronic monitoring of those employees. "Personal data" is defined as "any information concerning an employee which, because of name, identifying number, mark, or description, can be readily associated with a particular individual, and such term includes information contained in printouts, forms, or written analyses or evaluations." Section 8 governs the use of data collected by electronic monitoring and provides, among other things, that an employer shall not use quantitative data on an employee which is obtained by electronic monitoring and which records the amount of work performed by the employee within a specific time period as the sole basis for individual employee performance evaluation. Section 9 covers privacy protections and prohibits, for example, electronic monitoring in certain locations or electronic monitoring of an employee when the employee is exercising First Amendment rights. Please review the attached bill (with particular attention to the provisions noted above) to determine whether it presents any significant problems for participants in the investment company industry. If you have any comments or concerns, please contact me at (202) 955-3514 (or by fax at

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