

MEMO# 1503

November 1, 1989

INSTITUTE TO HOLD MEETING CONCERNING WRAP FEE ARRANGEMENTS AND ERISA BONDING

November 1, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 43-89 BAILEY/WILSON
SUBCOMMITTEE RE: INSTITUTE TO HOLD MEETING CONCERNING WRAP FEE
ARRANGEMENTS AND ERISA BONDING

_____ As we have previously informed you, Kathryn McGrath, Director of Investment Management at the SEC, has issued a no-action letter concerning wrap fee arrangements ("Wilson letter") (see Institute Memorandum to Investment Adviser Members No. 48-89 and Investment Adviser Associate Members No. 50-89, dated September 27, 1989). The Wilson letter generally stated that, although SEC inspections of advisers have not uncovered any significant abuses, wrap-fee arrangements have the potential for abuse. A copy of Ms. McGrath's letter and the requesting letter are attached. As stated at our October 10, 1989 Investment Advisers Committee meeting, we are concerned that the Wilson no-action letter may have expanded the premise upon which the Bailey administrative proceeding was brought. The Bailey case, a copy of which is also attached, was brought against the adviser for failure to disclose that it was not seeking best execution (i.e. there was no attempt to negotiate commissions for batched transactions). The Wilson letter, however, states that the adviser in Bailey was censured for not obtaining best execution for its clients. An additional concern to the Committee is the statement in the Wilson letter that "neither the Commission nor the staff has taken a position regarding the legality or propriety of 'wrap fees' as they relate to investment advisers." As was mentioned at the Investment Advisers Committee meeting, the Institute recently met with the staff of the Department of Labor concerning the Institute's request for relief under the ERISA bonding requirements for investment advisers. The DOL has expressed continuing concerns about the extent of SEC and state supervision of investment advisers. We would like your input concerning possible arrangements to address the Department's concerns. Thereafter, we will submit a follow-up letter addressing DOL's concerns. There will be a meeting on Wednesday, December 6, 1989 at the Institute beginning at 1:30 p.m. to discuss these and other issues. Lunch will be available starting at 12:30 p.m. Please contact Laura Thayer at 202/955-3518 by Friday, November 17 as to whether or not you will be able to attend the meeting. Robert L. Bunnan, Jr. Assistant General Counsel Attachment

should not be considered a substitute for, legal advice.