

MEMO# 923

January 13, 1989

SEC DENIES ICI REQUEST FOR AMENDMENT OF MARGIN RULE

@ 1 @ January 13, 1989 TO: OPERATIONS MEMBERS NO. 7-89 SEC RULES MEMBERS NO. 3-89 RE: SEC DENIES ICI REQUEST FOR AMENDMENT OF MARGIN RULE

The SEC's Division of Market Regulation, in the attached letter dated January 9, 1989, declines to grant the Institute's request for amendment of Rule 11d1-2 under the Securities Exchange Act of 1934 to eliminate the 30-day waiting period before extension of credit on mutual fund shares. The Institute submitted its request on August 10, 1987, arguing that the elimination of the 30-day hold was appropriate since Congress never intended to include mutual funds within the prohibitions of Exchange Act Section 11(d)(1); that the type of offering and manner of pricing of mutual funds differ significantly from that of industrial issuers so that the potential abuses the statute was drafted to protect against are not a concern, and finally, that an unwarranted competitive disparity exists between independent discount brokers and other broker-dealers (See Memorandum to SEC Rules Committee No. 42-87, dated August 19, 1987). In its response, the Division of Market Regulation states that it believes with the concurrence of the Division of Investment Management states its belief that it would not be appropriate to amend the rule at this time. The letter states that although it is true that in general the distribution of mutual fund shares differs from that of corporate issuer shares (price is not affected by supply and demand, and dealers in fund shares do not take a market risk) a distribution of corporate shares in a "best efforts" underwriting would be similar in this regard. In addition the staff is concerned that brokers selling shares that include a sales charge greater than the standard commission would have an incentive to arrange for extension of credit in circumstances where it would not be appropriate. @ 2 @ Susan P. Hart Assistant General Counsel Attachment