

MEMO# 1128

April 26, 1989

INSTITUTE COMMENTS ON PROPOSED LEGISLATION TO REGULATE TELEMARKETING ACTIVITIES

April 24, 1989 TO: BOARD OF GOVERNORS NO. 27-89 SEC RULES MEMBERS NO. 23-89
CLOSED-END FUND COMMITTEE NO. 12-89 FEDERAL LEGISLATION COMMITTEE NO. 6-89
UNIT INVESTMENT TRUST COMMITTEE NO. 20-89 RE: INSTITUTE COMMENTS ON PROPOSED
LEGISLATION TO REGULATE TELEMARKETING ACTIVITIES

Earlier this year, Representative Thomas Luken (D-OH), Chairman of the Energy and Commerce Subcommittee with jurisdiction over the Federal Trade Commission, introduced the "Telemarketing Fraud Prevention Act of 1989" (H.R. 1354). The bill would give the Federal Trade Commission the power to regulate telemarketing activities, including those involving securities, in the same manner as it regulates door-to-door sales. H.R. 1354 would also give the Federal Trade Commission, state attorney generals and private persons the power to bring a civil action against a person "who engages in telemarketing which is a fraudulent act or practice" or which is in violation of the rules adopted by the FTC. In addition, the Federal Trade Commission or state attorney generals could bring a civil action against a person who engages "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with" telemarketing. Abusive behavior would include "the placement of telephone calls without meaningful disclosure of the caller's identity." You may recall that in 1972 the Federal Trade Commission proposed to require a "cooling-off" period for door-to-door sales. The proposed rule would have required a person who sold goods or services door-to-door to refund the sales price upon request for up to three days after the sale. Because the proposed rule could have been interpreted to apply to sales of investment company shares and other securities, the Institute requested an exemption in the final rule for "transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission." The rule as adopted specified that the term "door-to-door sale" in the rule did not apply to transactions pertaining to the "sale of - 2 - securities or commodities by a broker-dealer registered with the Securities and Exchange Commission." Similarly, with respect to H.R. 1354, the Institute, in a letter to Chairman Luken and other members of the Committee, has requested that H.R. 1354 "be amended to grant an exemption for actions or claims arising out of federal or state securities laws for sales of investment company shares by registered broker-dealers." The Institute's request parallels that of SEC Chairman Ruder, who in recent testimony expressed the agency's support for a securities industry exemption. Copies of the Institute letter and the bill are enclosed. We will keep you informed of developments. Matthew P. Fink Senior Vice President and General Counsel Attachments

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