

MEMO# 1362

August 22, 1989

DEPARTMENT OF LABOR SETTLEMENT OF INVESTIGATION REGARDING ERROR CORRECTION PRACTICES

- 1 - August 22, 1989 TO: SEC RULES MEMBERS NO. 45-89 PENSION MEMBERS NO. 42-89 INVESTMENT ADVISER MEMBERS NO. 45-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 45-89 RE: DEPARTMENT OF LABOR SETTLEMENT OF INVESTIGATION REGARDING ERROR CORRECTION PRACTICES

As we previously advised, the SEC's Division of Market Regulation responded in October 1988 to an interpretive request from the Department of Labor concerning the applicability of section 28(e) of the Securities Exchange Act of 1934 to certain error correction practices involving employee benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). The investment adviser at issue had used commissions from transactions for ERISA plan clients to compensate brokers for losses on trading errors that were the adviser's responsibility. The Division of Market Regulation concluded that such practices did not fall within the section 28(e) safe harbor. (See Institute Memorandum to Investment Adviser Associate Members No. 54-88, Investment Adviser Members No. 53-88, Pension Members No. 48-88, and SEC Rules Members No. 56-88, dated December 2, 1988).

Attached is a copy of a Department of Labor press release announcing that the Department has obtained a voluntary compliance agreement with the investment adviser concerning these practices. The adviser has agreed to discontinue the practice of handling trading errors by directing trades to brokers, and to pay to the plans whose assets were involved in such brokerage transactions the dollar amount of the errors corrected by brokers in exchange for commission payments. The adviser also agreed to compensate plans for losses incurred as a result of acquiring securities originally purchased by the adviser for the account of another client. We will keep you informed of further developments. - 2 - Kathy D. Ireland Assistant General Counsel Attachment - 3 -