

MEMO# 8894

May 16, 1997

SEC DETERMINES NO ADDITIONAL RULEMAKING REQUIRED UNDER THE TELEMARKETING ACT

* SEC Release No. 34-38480 (April 7, 1997). May 16, 1997 TO: COMPLIANCE ADVISORY COMMITTEE No. 18-97 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 16-97 INVESTMENT ADVISER MEMBERS No. 18-97 SEC RULES MEMBERS No. 38-97 UNIT INVESTMENT TRUST COMMITTEE No. 30-97 RE: SEC DETERMINES NO ADDITIONAL RULEMAKING REQUIRED UNDER THE TELEMARKETING ACT

The Securities and Exchange Commission recently published its determination that no further Commission rulemaking is necessary under the Telemarketing and Consumer Fraud and Abuse Prevention Act. A copy of the release is attached.* The Act requires the Commission to promulgate, or to require the securities industry self-regulatory organizations ("SROs") to promulgate, rules substantially similar to the rules adopted by the Federal Trade Commission ("FTC") pursuant to the Act. The Act provides that the Commission may elect not to promulgate such rules only if it determines that existing rules provide protection against deceptive and abusive practices in securities transactions substantially similar to that provided by the FTC rules or that additional rules are not necessary or appropriate in the public interest. According to the release, the Commission found that the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs satisfy the requirements of the Telemarketing Act because the applicable provisions of these laws and rules are substantially similar to the FTC rules, except for those FTC rules that either involve areas already extensively regulated by existing securities laws or regulations or are inapplicable to securities transactions. Accordingly, the Commission determined that no additional rulemaking is required. With respect to investment companies and investment advisers, the Commission noted that most investment companies are sold through registered broker-dealers subject to NASD rules and that separate rulemaking under the Investment Company Act of 1940 would be largely duplicative of NASD rules. In addition, those investment companies that are self-distributed are prohibited from telemarketing under Exchange Act Rule 3a4-1. Furthermore, investment advisers employ telemarketing only infrequently, and existing rules include procedural safeguards that deter abusive telemarketing by advisers; however, the Commission stated that it would monitor the effectiveness of NASD telemarketing rules and consider whether investment adviser rules might be necessary in the future. Frances M. Stadler Associate Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8894.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.