

MEMO# 11741

March 20, 2000

COMMENT LETTER TO DEPARTMENT OF COMMERCE ON BARRIERS TO ELECTRONIC COMMERCE

*Department of Commerce, Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce, 65 Fed. Reg. 4801 (February 1, 2000). 1 [11741] March 20, 2000 TO: ELECTRONIC COMMERCE ADVISORY COMMITTEE No. 3-00 SEC RULES COMMITTEE No. 43-00 RE: COMMENT LETTER TO DEPARTMENT OF COMMERCE ON BARRIERS TO ELECTRONIC COMMERCE

The Department of Commerce recently issued a notice seeking public comment on laws or regulations posing barriers to electronic commerce.% The Institute has filed the attached comment letter responding to the notice. The letter is briefly summarized below. The letter begins by indicating that mutual fund organizations are on the cutting edge when it comes to using new technologies to increase efficiency and enhance the types and quality of services they provide to customers. It expresses strong support for initiatives such as this one that are aimed removing unnecessary impediments to electronic commerce. The Commerce Department's notice acknowledges that barriers can arise "simply from a lack of uniformity in policies, laws, standards or codes among different jurisdictions." The letter focuses on two areas in which a lack of uniformity among the laws of different jurisdictions serves as an impediment to the progress of electronic commerce for the mutual fund industry. These areas are: (1) electronic signatures and records; and (2) privacy of customers' nonpublic financial information. With respect to electronic signatures and records, the letter explains that currently, there is uncertainty as to whether electronic records and electronic signatures would satisfy requirements under federal or state law that a document or record be "in writing" or "signed." In addition, several states have taken a variety of approaches to authorizing the use of electronic signatures, resulting in a patchwork of inconsistent state laws. The letter expresses the Institute's support for the Uniform Electronic Transactions Act that the National Conference of Commissioners on Uniform State Laws has approved and recommended for adoption by individual states, but notes that it does not provide a complete solution to the issues. The letter thus recommends the enactment of federal legislation in this area, supporting in particular the general approach taken in H.R. 1714, the "Electronic Signatures in Global and National Commerce Act." On privacy issues, the letter discusses the Institute's support for the privacy provisions in Title V of the Gramm-Leach-Bliley Act. It states that the legislation achieves an appropriate balance between two important, but competing, shareholder interests: (1) giving shareholders control over uses of their nonpublic financial information that reasonably might be considered objectionable; and (2) ensuring that shareholders

efficiently receive financial products and services. The letter expresses concern that individual states might adopt inconsistent privacy requirements without giving the comprehensive new federal privacy requirements for financial institutions a chance to prove themselves effective. The letter thus urges the Department of Commerce and the United States Government Working Group on Electronic Commerce to encourage states to refrain from rushing to adopt their own financial privacy requirements. Frances M. Stadler
Deputy Senior Counsel Attachment

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