

MEMO# 12848

November 8, 2000

E-SIGN LEGISLATION: SUMMARY AND ANALYSIS

[12848] November 8, 2000 TO: TECHNOLOGY ADVISORY COMMITTEE No. 2-00 RE: E-SIGN LEGISLATION: SUMMARY AND ANALYSIS On June 30, 2000, President Clinton signed the Electronic Signatures in Global and National Commerce Act ("E-SIGN").¹ As enacted, E-SIGN gives legal recognition and effect to electronic signatures, contracts and records, and empowers the use of online contracts and provision of notices. E-SIGN contains extensive consumer consent provisions, special records retention requirements, and certain preemption provisions that limit states' ability to supersede the enacted legislation. Of particular interest to the mutual fund industry is the exemptive authority given to federal agencies allowing them to unconditionally exempt specified categories or types of records from the consumer consent provisions. Most notably, the bill directs the Securities and Exchange Commission to use this authority to issue a regulation or order that effectively allows mutual funds to provide prospective investors with an electronic fund prospectus at or before the time they access electronic sales literature without first obtaining investor consent to the electronic format of the prospectus. Accordingly, the SEC adopted, as an interim final rule, Rule 160 under the Securities Act of 1933, which enables funds to continue the practice, permitted under SEC's interpretive releases, of using hyperlinks on their websites to give prospective investors simultaneous access to both sales literature and the fund's prospectus. The E-SIGN legislation and SEC Rule 160 became effective October 1, 2000, except for certain E-SIGN provisions affecting the use of electronic records to satisfy records retention requirements, which will not become effective until March 1, 2001. A comprehensive summary and analysis of the key provisions of the E-SIGN legislation, prepared by outside counsel, is attached, along with a copy of the final legislation and SEC Rule 160. Barry E. Simmons Associate Counsel Attachments (in .pdf format) 1 Pub. L. No. 106-229 (June 30, 2000).